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Social Security Act as amended (49 Stat. 625, 53 Stat. 1373; 42 U. S. C., Sec. 409):
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(b) (10) 74

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Baker, *Assignments of Life Insurance Policies*, 27 Marquette Law Rev. 171 (1943) 28
Basye, Walter, *History and Operation of Fraternal Insurance*, Rochester (1919), p. 108 66
Beneficial Association, 10 C. J. S. Sec. 1 65
Best's *Illustrations* (1943) 63
Budget Standards for Family Agencies in New York City, New York (1938), p. 40 38
Cash Benefits Under Voluntary Disability Insurance in the United States, Bureau of Research and Statistics, Social Security Board, Report No. 6, pp. 72–73 68
Chicago Standard Budget for Dependent Families, Chicago (1937), pp. 30, 40 38
79 Cong. Rec. 7572–7573; 8540; 8815–8816; 9709–9710 ..... 57, 58, 59, 60
Cost of Living for Aged Persons, Bureau of Research and Statistics Memorandum No. 53 (1943), p. 30 39
Cost of Living For Women Workers, N. Y. State Dept. of Labor, Division of Women in Industry (1942), p. 35 38
Cost of Living For Women Workers and Minors Who Come Under the Provisions of the Minimum Wage Law of the State of New Jersey, N. J. Dept. of Labor, Minimum Wage Bureau (1938), p. 29 38
The Fraternal Compend Digest, 1941, p. 55 74
Fraternal Orders, 6 Encyc. Soc. Sciences (1931), 423 65
Fraternal Life Insurance, Indianapolis (1942), p. 113 68
Gesell, G. A., and Howe, E. J., *Study of Legal Reserve Life Insurance Companies*, Monograph No. 28, Temporary National Economic Committee, Washington (1941), pp. 5, 342, 365 ..... 19, 47
Gist, N. P. *Secret Societies: A Cultural Study of Fraternalism in the United States*, University of Missouri Studies, Vol. XV, No. 4, p. 156 68
Hinton, Jessie, *Budget Guides for Families Receiving Public Assistance*, Md. Board of State Aid and Charities, Baltimore (1937), p. 51 39
Howe, Ernest, *Hearings before the Temporary National Economic Committee*, 76th Cong., 3rd Sess., (1940) pp. 14700–14726 48
Huebner, S. S., *Federal Supervision and Regulation of Insurance*, Annals of the American Academy of Political Science, Vol. XXVI, No. 3, Nov. 1905, p. 703 41
Huebner, S. S., *Life Insurance*, New York (1935), p. 65 26
Huebner, S. S., *The Economics of Life Insurance*, New York and London (1927) 41
Maclean, J. B., *Life Insurance*, New York and London (1939), pp. 3–4, 448, 455 ..... 20, 21, 40

Miscellaneous—Continued. Page

Monograph No. 2, *Families and their Life Insurance—A Study of 2132 Massachusetts Families and their Life Insurance Policies*, Washington (1340), Temporary National Economics Committee 37

Monthly Minimum Standard Budget, City of Cincinnati, Department of Public Relief (1940), p. 6 39

Moulton, H. G., *The Financial Organization of Society*, Chicago (1931), p. 316 47

Mowbray, *Insurance—Its Theory and Practice in the United States* (1937) 23

New Jersey Department of Labor, 39th Annual Report of the New Jersey Bureau of Industrial Statistics for the Year ending Oct. 31, 1916, p. 262 51

New York Times: July 26, 1916; July 28, 1916; July 29, 1916, August 4, 1916; August 12, 1916 51

Nichols, *Fraternal Insurance in the United States: Its Origin, Development, Character, and Existing Status*, 70 Annals of the American Academy 109 (1921) 65

Pacific Underwriter, *The Insurance Strike*, July 25, 1916 .. 51

15 Proceedings, National Fraternal Congress of America, 251 (1928) 67

16 Proceedings, National Fraternal Congress of America, 157 (1929) 66

16 Proceedings, National Fraternal Congress of America, 107 (1929) 67

Quantity and Cost Budgets For Three Income Levels, Heller Committee for Research in Social Economics, Berkeley, Cal. (1942), p. 16 38

Report of the Budget Council of Boston (N. D.) p. 58 39

Report of the Committee on Statutory Legislation, 16 Proceedings, National Fraternal Congress of America, 155 (1929) 69

Report by Securities and Exchange Commission on Investment Trusts and Investment Companies, 75th Cong., 1st Sess., (1939), p. 1 31

Rydgren, A. A., *The Significance of Reduced Interest Earnings*, in Life Insurance, Trends and Problems, Philadelphia (1943) 40

Seligman, *Principles of Economics*, (12th ed. 1929), p. 607 .. 42

Senate Report No. 573, 74th Cong., 1st Sess., p. 18 56

Spectator Insurance Yearbook, *Life Insurance*, 1943 ..... 19, 47

The Spectator, *The Insurance Strike*, August 3, 1916 51

Stalson, J. O., *Marketing Life Insurance*, Cambridge (1942), p. 31 25

42 Statistics Fraternal Societies (1936) 24 66

Miscellaneous—Continued. Page

49 Statistics Fraternal Societies (1943), p. 26 62

Stecker, M. L., *Intercity Difference in Costs of Living in March 1935, 59 Cities*, WPA Research Monograph XII, Washington (1937), p. 86 37

Stecker, M. L., *Quantity Budget For Basic Maintenance and Emergency Standards of Living*, WPA Research Bulletin, Washington (1936), p. 54 37

Suggested Family Budget at Minimum Cost, Bureau of Aid to Dependent Children, Division of Public Assistance, Columbus, Ohio (1937), p. 38 38

Taxable Status of Fraternal Insurance, 47 Yale L. J. 965 65

Timberg, *Insurance and Interstate Commerce*, 50 Yale Law Journal 959 ..... 25, 47

U. S. Department of Labor, *Annual Report, 1917*, pp. 41, 52, 58 51

Weekly Underwriter, *The Prudential Strike*, July 29, 1916 51

Weiss, G. S., Waite, W. and Stitt, L., *Factors to be Considered in Preparing Minimum-Wage Budgets for Women*, U. S. Dept. of Agriculture, Pub. No. 324, p. 34 38

Temporary National Economic Committee, Hearings (1940) 19, 20, 25

Vance on Insurance (2d ed. 1930), p. 80 39

In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 226

POLISH NATIONAL ALLIANCE OF THE UNITED STATES OF NORTH AMERICA, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the court below (R. 227–240) is reported in 136 F. (2d) 175. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 185–220) are reported in 42 N. L. R. B. 1375.

JURISDICTION

The decree of the circuit court of appeals was entered on June 5, 1943 (R. 240–241).

The petition for a writ of certiorari was filed on August 4, 1943, and was granted on October 11,

1943, limited to the first five questions presented in the petition, which relate to the Act's applicability to petitioner. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and under Section 10 (e) and (f) of the National Labor Relations Act.

QUESTION PRESENTED

Whether the insurance activities of a fraternal benefit society are subject to the commerce power and the exercise thereof in the National Labor Relations Act.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, C. 372, 49 Stat. 449, 29 U. S. C., Sec. 151, *et seq.*) are set forth in the Appendix, *infra*, pp. 77–78.

STATEMENT

Petitioner, Polish National Alliance of the United States of North America, is a fraternal benefit society incorporated under the laws of Illinois (R. 46). It is the largest fraternal organization in the world of Americans of Polish descent (R. 106) and is licensed to do business in 27 States, the District of Columbia and Manitoba, Canada (R. 105). Petitioner is organized into 1,817 lodges, which are distributed throughout the United States (R. 133).

From its office in Chicago it "issues five (5) forms of insurance for adults" and eight types for children (R. 108, 118). As of December 31, 1941, petitioner had outstanding 272,897 insurance benefit certificates, of which 76.7 percent were held by certificate holders outside the State of Illinois (R. 137). As of the same date the amount of petitioner's insurance in force totalled $159,683,583.00 (R. 137).

During the year 1941, petitioner had a total income of $5,717,344, of which $291,982, or approximately 5 percent, was derived from assessments for its benevolent fund which is used for purposes unrelated to its insurance activities (R. 105; Bd. Exh. 9[1]). Of its total income during 1941, petitioner received $3,723,365.21 from its members in the form of premiums, payments, and fees, and $1,690,250.57 from investments, including $90,684.32 interest on loans to its members (R. 105; Bd. Exh. 9, p. 2).

Its total disbursements during the year 1941 amounted to $6,046,994 (Bd. Exh. 9, p. 3, line 48). Of this sum $1,745,015.24 was paid in death claims (*id.*, p. 3, line 1) and over $22,000 represented

[1] Board Exhibit 9, which is petitioner's Annual Statement for 1941; Board Exhibit 10, which is petitioner's Statistical Manual; and Exhibit A to petitioner's answer, which is the volume containing the petitioner's Constitution and By-laws, are not contained in full in the printed record, but are a part of the record before this Court in their original form. See R. 251–252.

annuity payments (*id.*, line 4). Disbursements of about $189,000 were made for commissions, fees, and other compensation paid for the acquisition of new business (*id.*, lines 17 and 18), while expenses incurred for the collection and remittance of payments and dues totalled $135,453.18 (*id.*, line 25). In addition, the Alliance paid out $2,708.19 for the travelling expenses of its organizers or agents (R. 138), and spent for advertising, printing, and stationery $43,272.02 (Bd. Exh. 9, p. 3, line 30), of which a large percentage represented an outlay for advertising in newspapers, magazines, radio, and other media outside the State of Illinois (R. 138). Petitioner's expenses for postage, express, telegraph, and telephone charges amounted to $19,125.95. Finally, in 1941, petitioner disbursed from its benevolent fund $283,761.67, less than 5 percent of its total disbursements (Bdd Exh. 9, p. 3, lines 30, 48).

As of December 31, 1941, petitioner owned total admitted assets of $30,090,835.94 (R. 105), including bonds bearing a total value in excess of $13,000,000, stock of about $30,000 in value, and certificate liens worth about $1,500,000 (Bd. Exh. 9, p. 4). Petitioner's "unassigned funds" (available surplus) amounted to $1,813,056.63, of which $137,704.87 was held as the benevolent fund (R. 105; Bd. Exh. 9, p. 5).

Petitioner issues insurance policies or "certificates" upon the level premium plan in amounts from $250 to $5,000. The types of adult insurance[2] provided for are: Ordinary life, 20-year endowment,[3] endowment at the age of 65, and combined term and paid-up at age of 65 (R. 108–110). Provision for double indemnity in the event of accidental death is also offered as a rider to all of petitioner's regular policies (R. 117–118). These types of insurance are the usual stock in trade of the "old-line" American life insurance company. In all of the policies issued by petitioner the insured's right to the reserve value of the certificate is preserved through certain "non-forfeiture options." Upon the surrender of the certificate by the insured after the payment of premiums for three or more years, the insured is entitled to the full cash value of his certificate. He may also contract a loan for any amount not exceeding the cash value of the certificate. If the cash surrender or loan option is not exercised and a default occurs after payments have been made for three years or more, the certificate is automatically converted into a paid-up nonparticipating certificate for the full face amount of the certificate

[2] Petitioner's juvenile insurance business represents only a small fraction of its total business and is therefore not discussed here.

[3] Of this type of insurance the Alliance says (R. 116), "This form of insurance embodies a savings and term insurance feature which appeals to persons interested not only in the insurance but also the investment angle."

as term insurance for such term as the net cash value will buy when applied as a net single premium. Alternatively the insured may, within a grace period after the date of default in any payment, by application, convert the certificate into a paid-up nonparticipating life certificate to yield a reduced amount of death benefits (R. 122; Bd. Exh. 10).

All of the insurance is of the participating type, *i. e.*, the certificates provide for the payment of dividends from the available surplus after the certificates have been in force for two years (R. 112, 114–117). Petitioner extends to the insured the option of (1) withdrawing dividends in cash; (2) placing them on deposit with the Alliance to accumulate interest at a rate not less than 3 percent; (3) applying them either as a net single premium for the purchase of a paid-up addition to the certificate already in force; or (4) applying them against premium payments due on the certificate or to accelerate maturity (R. 112–113). In the same manner, if the insured does not desire that the insurance proceeds be paid in a lump sum, he may exercise settlement options whereby the proceeds are deposited with the Alliance or are paid in fixed instalments. In either case the Alliance obligates itself to pay interest of not less than 3 percent upon all sums deposited with it (R. 113).

Petitioner's members are its certificate holders. In 1938 it abolished its "social members" classi-

fication and now admits only "beneficial members," *i.e.*, insured members (R. 7–8, 54). Membership is not confined to the Polish community. Those of Lithuanian, Ruthenian and Slovak nationality and their husbands and wives, regardless of nationality, are also qualified for membership (R. 54). The class of those who may be beneficiaries is limited in no way.[4] Beneficiaries may be freely changed, and assignment of the certificate's cash surrender value and of accrued and declared dividends is permitted (Alliance Constitution and By-Laws, Section 37).

In addition to the scientifically computed insurance premiums, which are payable annually, semiannually, quarterly, or monthly, a flat assessment of 21 cents per month is levied upon each member, social or beneficial, of which 18 cents is allotted to a general fund, disposed of in accordance with the decisions of the conventions of the Alliance and used for such purposes as administration expenses, financing the "Zgoda," the official organ of the Alliance, and for social and benevolent activities (R. 35, 111). The remaining 3 cents is allotted to a fund which finances a

[4] Petitioner's Constitution and By-Laws (R. 59) provide that the insured may designate his estate as beneficiary or any person or entity permitted by the laws of the State of Illinois. No limitation upon the class of those who may be beneficiaries is contained in the Illinois law. Illinois Insurance Code, Ill. Rev. Stat. (1941), Ch. 73, Art. XVII, Sec. 286.

school, Alliance College, maintained by petitioner (R. 35).[5]

Petitioner's business is managed by officers and directors who perform their duties in Chicago. All terms and conditions of its insurance certificates are determined, investments made, applications for insurance approved, claims and loans acted upon, and all insurance certificates and checks executed, at the home office in Chicago (R. 133–134).

Petitioner's insurance offerings are sold by paid field agents or organizers. The Alliance pays commissions to all field workers who sell insurance. The average fee is 50 percent of the first annual premium. Between twenty-five and thirty organizers sell insurance for the Alliance in designated districts on a full-time basis and supervise the activities of over 200 part-time organizers. The full-time organizers get advance commissions and also get a portion of the business obtained by the part-time organizers in their allocated districts (R. 11). In 1941, petitioner spent over $189,000[6]

[5] The aim of the school is to provide education for members or their children at a nominal fee (R. 27).

[6] According to petitioner's annual statement, $169,188.82 was expended for "commissions and fees on payments by members," $20,127.82 was accounted for by "compensation of managers and others not paid by commission for services in obtaining new benefit protection," and $2,598.78 was disbursed for "field supervision and travelling expenses" (Bd. Exh. 9, p. 3, lines 17–19). In addition, more than $10,000 was spent in 1941 for advertising outside of Illinois

in commissions, fees, and other compensation for obtaining business. All of petitioner's members receive weekly the "Zgoda," the official Alliance publication (R. 135). A daily edition of the "Zgoda" appears for sale on newsstands, in Illinois, Indiana, and Michigan (R. 15–16).[7]

Two further aspects of petitioner's activities are intimately related to its functions as an insurer. Petitioner engages the services of the Retail Credit Company of Atlanta, Georgia, to investigate the character and financial status of the applicant for insurance. Inquiry forms are addressed by petitioner's underwriting department to the branch of the credit company which is situated closest to the applicant's home, and when returned to petitioner's office, are considered in connection with the application (R. 6, 10–11). Finally, petitioner insures itself against substandard risks by reinsuring them with the Lincoln Mutual Life Insurance Company of Fort Wayne, Indiana (R. 8–9).

In March 1941 the Office Employees' Union, No. 20732, A. F. of L., hereinafter called the Union, began an organizational campaign among petition-

(R. 138). Petitioner also promotes its activities through an official almanac which is sold throughout the United States at 50 cents a copy (R. 12).

[7] This newspaper is a member of the United Press and has a daily circulation of about 26,000. Both the weekly and daily Zgoda are products of the Alliance Printers and Publishers, Inc., a corporation which is wholly owned, and controlled by petitioner (R. 15–16, 135–136).

er's office employees, and, by March 26, the Union included within its membership a majority of petitioner's employees in an appropriate unit (R. 194–195).[8] Confronted with the successful unionization of its employees, petitioner's directors and executives set out to undermine the Union. Petitioner interrogated them respecting their union membership and activity (R. 198) and offered wage increases to the Union Chairman, provided that he "dropped all union activities and induced the other employees to do likewise" (R. 197, 201).

Despite petitioner's open antagonism, the Union, from March 26, 1941, to October 6, 1941, sought to bargain with petitioner, but to no avail (R. 195–197). Petitioner, claiming that the Act did not apply to its activities, admittedly refused to bargain (R. 195–196). On September 26, after the Union had announced its intention to strike, petitioner assured the Union that if the contemplated strike action were postponed until after the

[8] The Board found (R. 191–194) that all office employees of petitioner's Chicago office, excluding janitors, attorneys, elected officers, the chief clerk of the auditing department, the manager of the real estate department, the inspector of the rent-collection department, rent collectors, the chief organizer of the organization department, the personal secretary to the president, the personal secretary to the general secretary, the confidential secretary to the censor (employed at Milwaukee, Wisconsin), the assistant secretary (administrative) to the general secretary, the assistant secretary (administrative) to the treasurer, and librarians, constitute a unit appropriate for collective bargaining purposes.

December 10 meeting of petitioner's Supervisory Council, employment relations would ultimately be adjusted (R. 196). Less than two weeks after this pronouncement, petitioner discriminatorily discharged a leading member of the Union, Anna Owsiak (R. 202–205). When petitioner failed to carry out a promise of reinstatement, the Union voted to strike (R. 205). The Board found that petitioner, "as a result of these unlawful acts and [its] unwavering course of antiunion conduct" caused the foregoing strike (R. 209).

Petitioner sought to break the strike by various steps calculated, as the Board found, to "impress upon the striking employees the futility of remaining members of the Union and to evade its duty to bargain collectively" (R. 209). Thus, it persisted in its refusal to bargain with the Union (R. 209), continued to make disparaging comments about the Union to Union members (R. 205–208), and, by several devices, including the publication in its official organ of false and misleading statements concerning the causes and status of the strike, urged the strikers to return to their jobs (R. 206–208).

On January 27, 1942, after the discontinuance of the strike, and again on February 9 and 11, the strikers unconditionally offered to return to work and applied for reinstatement (R. 210–213). Petitioner admittedly ignored all of these communi-

cations and, at the time of the hearing, none of the strikers had been reinstated (R. 210–213).

Upon the basis of the above facts, the Board found that petitioner had engaged in unfair labor practices and that the practices affected commerce within the meaning of the Act, and issued an appropriate order (R. 191, 213, 217–219). On August 21, 1942, petitioner filed in the court below a petition to review the Board's order (R. 221). On June 5, 1943, the court handed down its decision and entered its decree upholding the Act's applicability to petitioner, and enforcing the Board's order with modifications not here in issue (R. 240–241). On October 11, 1943, this Court granted a writ of certiorari limited to the question of the applicability of the Act to petitioner (R. 249).

SUMMARY OF ARGUMENT

This brief considers only the distinctive features of the life insurance industry, and petitioner's arguments as to the interpretation of the National Labor Relations Act and the charitable and benevolent nature of its activities. A more complete discussion of the constitutional questions is presented in the Government's brief in No. 354.

I

A. The life insurance business, in general, and that of petitioner in particular is carried out through the constant use of the channels of inter-

state communication. The contracts of insurance, issued in the main to persons in states other than that containing the home office, become effective only when approved at the home office, and are performed through the sending of money by each party to the other across state lines. These activities are both interstate and commerce. In addition to the considerations applicable to insurance generally, referred to in our brief in No. 354, the life insurance companies are engaged in the business of investment on a large scale, and also serve as financial and loan institutions for their policyholders. Such activities are undoubtedly commercial.

B. Because of its cash surrender and loan value, the policy of life insurance is an article of commerce in its own right. It has many of the attributes of a security, and has been treated as property both by Congress and by this Court. The transmission of life insurance policies across state lines is thus interstate commerce in and of itself, apart from the other aspects of the insurance business. Compare *Champion* v. *Ames*, 188 U. S. 321; *International Textbook Company* v. *Pigg*, 217 U. S. 91; *Securities and Exchange Commission* v. *Joiner Leasing Corp.*, No. 24 this Term. The statements to the contrary in *Paul* v. *Virginia* and in *New York Life Insurance Co.* v. *Deer Lodge County* cannot be supported.

C. Even if the insurance business be regarded as performance only of the intangible service of furnishing protection, it would still be commercial. Commerce is not limited to the purchase of physical or tangible articles. The buying of life insurance is properly treated by the purchaser as commercial to the same extent as the purchase of other commodities. Cf. *American Medical Association* v. *United States*, 317 U. S. 519.

D. The National Labor Relations Act extends to industries essential to interstate commerce, although not themselves engaged in it. *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197. The life insurance industry is a major source of credit to business unquestionably in interstate commerce. A substantial portion of the indebtedness of railroads and utilities, in particular, is owned by life insurance companies. We submit that an industry and an enterprise which in the regular course of business is a necessary source of credit to industries in interstate commerce is within the scope of the Federal power to relieve that commerce of burdens and obstructions.

II

The National Labor Relations Act applies to unfair labor practices affecting commerce. If petitioner's activities are in commerce or essential

to it, petitioner comes within the terms of the Act inasmuch as a stoppage of its operations by a labor dispute would affect commerce. Both the language of the Act and its legislative history show an intention to exercise all the constitutional power of Congress over the subject regulated, not to freeze into the statute limitations expressed in prior judicial decisions which might be disapproved. There is, therefore, no basis for attributing to Congress an intention to exempt the insurance industry from the Act.

III

Petitioner is not engaged primarily in charity or benevolence and only incidentally in the life insurance business, but the contrary. However philanthropic may have been the purposes of its founders, its activities are now substantially the same as those of the ordinary mutual life insurance company. The fact that petitioner is owned and controlled by its policy holders does not make it a charitable or non-profit organization. The members pay for what they get, and receive the profits themselves by way of dividends. Moreover, even if petitioner were a non-profit organization, it would be subject to the commerce power, inasmuch as the commerce clause reaches all interstate transactions, whether or not they are commercial in the strict sense.

ARGUMENT

The Scope of This Brief, in Relation to That Filed in No. 354

This case raises the same fundamental question as *United States* v. *South-Eastern Underwriters Association,* No. 354—whether the insurance business is subject to regulation under the federal commerce power. Although No. 354 is concerned with fire insurance, most of what is said on the constitutional issue (Point I) in the Government's brief in that case applies to life insurance as well.

For the life insurance business, just as the fire insurance business, is conducted on a nation-wide scale through the channels of interstate commerce. And the life insurance contract is performed, as is the fire-insurance contract, through the transmission of money, usually across state lines, from the insured to the company by way of premiums, and from the company to the insured or his beneficiary when the policy becomes due.*

In one respect, life insurance is more centralized than fire. The life insurance agent is not authorized to enter into binding contracts with the insured; the application for life insurance must be sent to the home office for approval before any

* The life insurance policy normally contemplates a continuous series of payments to the company over a long period, and often the company pays the insured or his beneficiary in instalments. Fire insurance policies are usually for shorter terms.

contract is made, whereas the fire insurance agent enters into the contract on behalf of the company subject only to the subsequent right of cancellation in the home office. When the life insurance policy is transmitted in interstate commerce it is a binding contract and not a blank form to be filled out. The life insurance contract also differs from the fire in that it has investment and security features which are distinctly commercial in themselves, and which have caused the policy to be regarded as a valuable "property" in the same sense as other securities.

The relationship between fire and life insurance and other industries is also not the same. Fire insurance is essential to commerce in the goods and industries insured, inasmuch as necessary credits cannot be obtained without insurance on the property. The interest of the life insurance companies in other business is derived from the investments of the billions of dollars of reserve funds which they control; the impact of these investments on the national financial and credit system cannot be overestimated. Substantial portions of the obligations of the railroads and public utilities in particular are controlled by the life insurance companies.

An obvious difference between this case and No. 354 is that it arises under the National Labor Relations Act and not the Sherman Act. The language, purposes, and history of both statutes

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show that each was designed to exhaust the constitutional power of commerce over the subject regulated. Petitioner here, however, is in no position to make an argument, similar to that advanced in No. 354, that application of the Labor Relations Act to insurance will disorganize or impair the efficient operation of the industry, or interfere with the operation of the state laws regulating insurance. Whatever may be said in support of the contention that insurance differs from other industries with respect to the nature of its rate structure and the advantages and disadvantages of competition does not apply to the labor relations of insurance companies.

In this case petitioner argues that it is not in commerce because it is a fraternal benefit society not engaged in the insurance business. This feature of the case has no counterpart in No. 354.

We do not believe that any of the distinctions between this case and No. 354 are of sufficient consequence to warrant a different result. Certain features of the life insurance business nevertheless require special consideration, and petitioner's arguments as to the interpretation of the National Labor Relations Act and the "charitable and benevolent" nature of its business are not answered in our brief in No. 354. This brief will deal with these matters. For a general and full discussion of the constitutional question raised, the Court is respectfully referred to Point I of the Government's brief in No. 354.

I

THE LIFE INSURANCE BUSINESS IS SUBJECT TO THE FEDERAL COMMERCE POWER

A. THE LIFE INSURANCE BUSINESS IS ORGANIZED AND FUNCTIONS THROUGH THE USE OF INTERSTATE CHANNELS

The life insurance business in the United States is of enormous size. As of 1938, there were about 125,000,000 policies in force on about 64,000,000 lives.[10] As of December 1942, life insurance in force exceeded one hundred and thirty billion dollars and the assets of the insurance companies more than thirty-five billion dollars.[11] Only a small fraction of the assets of this vast industry is held by companies doing business in only one state.[12] This is no accident, since the success of the life insurance business depends upon a large and diversified body of risks.

The principle of loss sharing which is basic to all insurance can only be made effective if large numbers participate in sharing the losses. This is so because the stability of the rate of loss increases with the increase in the number of indi-

[10] Temporary National Economic Committee *Hearings*, 76th Cong., 1st Sess., p. 1196.

[11] *Spectator Insurance Yearbook; Life Insurance*, 1943, pp. i, 171A, 415b.

[12] Gesell, G. A., and Howe, E. J., *Study of Legal Reserve Life Insurance Companies*, Monograph No. 28, Temporary National Economic Committee, Washington (1941), p. 5.

viduals subject to the same risk. For this reason, *inter alia,* companies seek to handle a large volume of business. The relationship between the company and the individual, therefore, cannot be viewed in isolation, and the transactions of each individual with the company necessarily tend, as a matter of sound insurance practice, to involve and be a part of a large pattern. *New York Life Insurance Co.* v. *Statham,* 93 U. S. 24, 30–31.

The need for volume has led the companies into the interstate market. The fact that the average individual must be persuaded to buy insurance has resulted in the creation of a vast interstate distribution, servicing and marketing system, similar to that used in the marketing of other products. The mechanism of the general or direct insurance agency, the branch office, the soliciting agent, the part-time agent, and the insurance broker are all commonplaces of our distributive economy.[13] At the present time only one life insurance company transacts business without agents.[14]

It is apparent that this distribution system necessarily involves constant interstate transportation, communication and transmission of documents and money between the company and its agents. Moreover, since life insurance applications are passed on and policies issued from the

[13] See, Temporary National Economic Committee *Hearings*, 76th Cong., 1st and 2nd Sess., pp. 6505–6598.

[14] Maclean, J. B., *Life Insurance*, New York and London (1934), p. 455.

home office (R. 133–134),[15] there is a constant interstate course of dealing between the company and its out-of-state policy holders. Payments of premiums and claims, applications for loans, exercise of settlement options, transmission of dividends, all involve extensive interstate dealings (R. 137).

The day-to-day functioning of a life insurance company such as petitioner depends upon this constant and complex series of interstate transactions. These transactions are not casual or optional but are intrinsic to the effective functioning of an insurance company of petitioner's type.[16]

Thus, from its home office in Chicago, petitioner directs its field agents throughout the 29 jurisdictions in which it is authorized to transact business, and pays their commissions and traveling

[15] MacLean, J. B., *op. cit.*, at pp. 448–454.

[16] The suggestion in *New York Life Insurance Co.* v. *Deer Lodge County*, 231 U. S. 495, 509 that the interstate transmission through the mails of premiums to the home office and of benefits to the policy holder is merely a form of administrative centralization, not essential to the character of the business, reflects a serious misunderstanding of life insurance as it is universally practiced. Premiums or notice of their payment obviously must be received and recorded at the home office if the company is to administer its whole body of risks soundly. Obviously claims must be approved by and payments made from the home office in order that the payments be consistent with the liabilities assumed by the carrier. Likewise loans must be approved at the home office since the records of the company at the home office show the borrower's reserve.

expenses. Applications for insurance, wherever obtained, are sent to Chicago for approval. If the application is approved, the benefit certificate is remitted to the insured, 76 percent of whom are situated outside the State (R. 137). The transaction which initiates the relationship between petitioner and the insured is thus in most cases not only interstate in character but also the product of prior interstate communications and transmission of money and documents.

After the contract has been put into effect, there follows, for the lifetime of the insured (or for 20 years, or until the insured is 65 years old) a steady flow of monthly, quarterly, semiannual, or annual payments from the locality of the insured to petitioner's home office. This interstate current of funds is the lifeblood of petitioner's operations; all of its other activities are dependent on this steady flow. *New York Life* v. *Statham*, *supra*.

Flowing back to the persons named or their beneficiaries is a stream of benefit payments upon the maturity of both endowment and ordinary life policies, either in lump sums or in periodic installments, dividends, loans, interest and cash refunds upon the surrender of the policy. Further interstate communication and transmission of funds between petitioner and its widely scattered group of certificate holders are involved in the exercise of settlement options and the repayment of loans. Moreover, interstate transactions fur-

ther characterize petitioner's reinsurance dealings (*supra*, p. 9), and its relationship with the Retail Credit Company which reports upon the financial status of applicants for insurance (*supra*, p. 9).

The activities of an insurance company extend beyond the mere issuance of insurance contracts and include the performance of such contracts as well. If, therefore, the doctrine of the insurance cases be confined to the issuance of the insurance policy (cf. *Western Live Stock* v. *Bureau of Revenue*, 303 U. S. 250, 253), the patently commercial aspects of the remainder of petitioner's activities [17] would place its employees within the protection of the Act. For a strike of the employees would disrupt all these activities, and not merely the issuance of policies.[18]

B. THE LIFE INSURANCE BUSINESS IS COMMERCIAL IN CHARACTER

(1) *In general.*—In this case, as in *United States* v. *South-Eastern Underwriters Association*, No. 354, it is not questioned that the above activities are interstate but, rather, that they are "com-

[17] That the activities which succeed the making of an insurance contract may be more important commercially than those which attend the creation of the contract itself, see *Hoopeston Canning Co.* v. *Cullen*, 318 U. S. 313, 317.

[18] The effect of a suspension of the operations of an insurance company is described in Mowbray, A. H., *Insurance, Its Theory and Practice in the United States* (1937), pp. 258–259.

merce." Such a contention assumes that interstate commerce in the constitutional sense requires something more than interstate intercourse and communication. As the Government's brief in No. 354 points out (pp. 17–19, 35–42), except for *Paul* v. *Virginia* and the cases following it which state that insurance is not commerce, the decisions of this Court show the contrary. A long series of cases[19] establishes that interstate commerce consists of all kinds of movement across state lines, whether or not "commercial" in the sense of business transactions, and the historical background of the commerce clause[20] shows that these cases were correctly decided.

But aside from this broad principle, insurance is manifestly "commercial" as that term is commonly understood. This is clear even from a threshold glance. The activities of the insurance companies are usually described as "the insurance business";[21] the operating units are collectively referred to as "the insurance industry." Insurance is ordinarily spoken of as "bought" or "sold,"[22] the sale of a policy is termed writing or obtaining new "business" (R. 10), the distribu-

[19] Cited and discussed at pp. 17–19 of the Government's brief in No. 354.

[20] See the Government's brief in No. 354, pp. 42–48.

[21] Internal Revenue Code, Section 201. And see cases cited in the Government's brief in No. 354, pp. 58–60.

[22] *Beechley* v. *Mulville*, 102 Iowa 602, 608, 70 N. W. 107, 109.

tion of the insurance product is the work of "producers" [23] who are part of a "marketing" mechanism.[24] It would be difficult to discuss insurance today without referring to it in commercial terms.

Moreover, particular activities of life insurance companies are impressively commercial. The persons insured and the companies perform their contracts through the transmission of money, which is obviously a subject of commerce.[25] The companies are engaged in the business of investing funds and managing such investments on a tremendous scale.[26] The Securities Act and the Securities Exchange Act are predicated on the assumption that investments are subjects of commerce, and this Court has so indicated.[27]

Petitioner offers its certificate holders an insurance rate upon the assumption that their contributions, when invested, will earn 3 percent interest. This investment activity, which is an integral part

[23] *Osborn* v. *Ozlin*, 310 U. S. 53, 60.

[24] See Stalson, J. O., *Marketing Life Insurance*, Cambridge (1942), p. 31: "The marketing function, broadly considered, is the same in life insurance as in any other industry."

[25] On this point, see the Government's brief in No. 354, pp. 20–21.

[26] Temporary National Economic Committee, *Hearings* (1940), pp. 14698, 15494, 15688–9; Timberg, *Insurance and Interstate Commerce*, 50 Yale L. J. 959–962, 1006–1016.

[27] See *Securities and Exchange Commission* v. *Joiner Leasing Corp.*, No. 24, this Term, decided November 22, 1943, and cases cited on pp. 40–41 of the Government's brief in No. 354.

of its business, yielded petitioner well over one and one-half million dollars in 1941 (R. 105). Certainly it could not be said that a relationship which systematically provides funds for investment is not a commercial one. Similarly, upon the security of their policies petitioner's members borrowed about $1,500,000 in 1941 at interest (*supra*, p. 4).[28] These, too, are manifestly commercial transactions. The policy has other commercial uses as well. It may insure the life of a commercially valuable individual;[29] and it may be pledged as collateral for a loan.[30] It may be assigned to a creditor,[31] or used to improve the insured's credit rating.[32] When these plainly commercial aspects of the insurance relationship are viewed in the light of the fact that they are made possible by the periodic payment of a small sum of money—the classic subject, object and instrumentality of commerce—in exchange for the payment of a larger sum of money upon the happening of the event insured against, it can hardly be said that insurance is non-commercial.

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[28] In this year (1941) petitioner received more than $90,000 in interest upon certificate loans (*supra*, p. 3).

[29] *United States* v. *Supplee Biddle Hardware Co.*, 265 U. S. 189.

[30] *Chase National Bank* v. *United States*, 278 U. S. 327, 335.

[31] *Grigsby* v. *Russell*, 222 U. S. 149. On the assignability of a fraternal benefit certificate, see *North American Union* v. *Hart*, 250 Fed. 390, 394 (C. C. A. 8).

[32] Huebner, S. S., *Life Insurance*, New York (1935), pp. 65–70.

Inasmuch as the Government's brief in No. 354 (pp. 42–60) discloses a substantial uniformity of opinion, both in the constitutional period and since—outside of the one group of decisions and a minority of commentators thereon—that the insurance business is commercial, further elaboration of the point seems unnecessary here.

2. *A life insurance policy is an article of commerce.*—The investment features of the life insurance industry support our position that it is a business or commercial operation. This is true both as to the investment operations of the company and of the investment value of the policy to the insured.

The latter is doubly significant. If the insurance policy itself has value, it is not a mere "contract of indemnity" (*Paul* v. *Virginia*, 7 Wall., at 183), but a subject of commerce in its own right,[33] just as any other security. A security may be only a promise to pay, but it is nevertheless regarded as property, and accordingly as an article of commerce.

That a life insurance policy has often been treated as property in this sense is undeniable. The level premium plan of insurance creates a reserve upon the security of which the policy-

[33] Even apart from its reserve aspect, life insurance is not a contract of indemnity, since payment is both certain and for a face amount, not to the extent of proved financial loss. See *infra*, p. 39, n. 47. This feature of life insurance as well as the reserve value of the policy distinguish it from fire insurance.

holder may freely borrow or which he may withdraw in cash upon the surrender of his policy. The policy thus bears a value to the extent of the insured's share in the reserve. That the policy itself, to the extent of the cash surrender value, is treated as property is seen most directly in the provisions of Section 70 (a) of the Bankruptcy Act (11 U. S. C., Sec. 110 (a) (5)), which provides that the insurance policy of a bankrupt which has a cash surrender value payable to himself, his estate or personal representative "shall pass to the trustee as assets unless the bankrupt shall pay to the trustee the cash surrender value" See *Burlingham* v. *Crouse*, 228 U. S. 459, 471–472; *Cohen* v. *Samuels*, 245 U. S 50."

The Court has recognized the desirability of clothing insurance policies with the characteristics

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[34] In the first case the Court stated that "life insurance policies are a species of property" (228 U. S. at 471), and in the second applied the provisions of the Bankruptcy Act described in the text to an insurance policy which designated a beneficiary other than the bankrupt subject to a reserved absolute power in the bankrupt to change the beneficiary. It is to be noted that petitioner's bylaws (Section 37) grant its members the right to change the beneficiary designated in the certificate at any time. The revocable character of the beneficiary designated in the certificate enhances the property value of the certificate since the beneficiary's interest is a mere expectancy which is subordinate to that of the assignee or pledgee. See Baker, *Assignments of Life Insurance Policies*, 27 Marquette Law Rev. 171, 181–182 (1943); *Aetna Life Insurance Co.* v. *Phillips*, 69 F. (2d) 901 (C. C. A. 10); *Carnes* v. *Franklin Life Insurance Co.*, 81 F. (2d) 800 (C. C. A. 5).

of property even apart from the reserve value represented by the policy. Thus, in *Grigsby* v. *Russell*, 222 U. S. 149, 156, the Court upheld the right of an owner of a policy to sell it despite the absence of an insurable interest in the vendee and pointed out that, "life insurance has become in our days one of the best recognized forms of *investment and self-compelled* saving. So far as reasonable safety permits, it is desirable to give to life policies *the ordinary characteristics of property*. This is recognized by the Bankruptcy Law, § 70, which provides that unless the cash surrender value of a policy like the one before us is secured to the trustee within thirty days after it has been stated the policy shall pass to the trustee as assets. Of course the trustee may have no interest in the bankrupt's life. To deny the right to sell except to persons having such an interest [an insurable interest in the life of the insured] is to diminish appreciably the value of the contract in the owner's hands." [Italics supplied.] See also *Midland Bank* v. *Dakota Life Ins. Co.*, 277 U. S. 346.

The property value of the life policy in level premium insurance has many of the characteristics of a security interest. This is so because a large part of the reserve of a life insurance company represents investment income. Thus, petitioner's investment income for 1941 constituted almost one-third of its total income (*supra*,

p. 3).[35] Similarly, the dividends paid by mutual companies are related in characteristics to income from securities. Pointing out in *Penn Mutual Life Insurance Co.* v. *Lederer,* 252 U. S. 523, 531, that "in level-premium insurance, while the motive for taking it may be mainly protection, the business is largely that of savings investment," the Court there held that dividends issued by a mutual life insurance company involved a return based on investment income. See also *Lucas* v. *Alexander,* 279 U. S. 573, 580.

As a reserve accumulates, the policy clearly emerges as an investment contract resembling the conventional security, to which is attached a special provision in the event of death.[36] Each policy holder in effect owns a cross-section of his company's investment portfolio measured by the extent of his reserve. Whatever the label that is attached to this interest, it has recognized status as property.[37] As this Court has observed, "a

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[35] Compare *Duffy* v. *Mutual Benefit Life Insurance Co.,* 272 U. S. 613, where approximately one-half of the company's assets represented investments.

[36] That the life insurance contract is primarily an investment program, see *Commissioner of Internal Revenue* v. *Illinois Life Insurance Co.,* 80 F. (2d) 280, 282 (C. C. A. 7).

[37] Whether or not life insurance policies are technically securities is, of course, of no importance in deciding whether their value clothes them with the characteristics of property. It is, however, noteworthy that ordinary life insurance policies bear a marked resemblance to investment

policy of life insurance is a contract susceptible of ownership like any other chose in action."[38] A document which represents and bears upon its face the value (R. 122) of the interest of the insured in the carrier's reserve, which can upon its surrender be converted to cash,[39] which is an asset in the event of bankruptcy, and which may be pledged to a bank for a loan,[40] can scarcely be said to be so devoid of property characteristics as not to constitute a subject matter of commerce even in the most restricted sense.

Thus, even if commerce were a highly technical concept, confined to property transactions, interstate dealings which give rise to and improve the value of life insurance policies would be interstate

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certificates of the "accumulative" type, which are investment contracts on the installment plan with provisions for payments of the face value of the certificates upon maturity and cash surrender and loan options. See *Wilcutts* v. *Investor's Syndicate*, 57 F. (2d) 811 (C. C. A. 8); *National Thrift Corporation* v. *Welch*, 56 F. (2d) 1077 (S. D. Cal.), appeal dismissed by stipulation, 66 F. (2d) 1009; Report by *Securities and Exchange Commission on Investment Trusts and Investment Companies*, 75th Cong., 1st Sess. (1939), pp. 1, 43–44.

[38] *Burnet* v. *Wells*, 289 U. S. 670, 679.

[39] The surrender requirement is not a formal one; the physical surrender of the policy is normally required before cash is made available. See *Martin* v. *N. Y. Life Insurance Co.*, 104 F. (2d) 573 (C. C. A. 7); *United States* v. *Metropolitan Life Ins. Co.*, 41 F. Supp. 91, 93 (S. D. N. Y.).

[40] *Chase National Bank* v. *United States*, 278 U. S. 327, 335.

commerce. Two cases which make this conclusion clear beyond question are *Champion* v. *Ames*, 188 U. S. 321, and *International Textbook Co.* v. *Pigg*, 217 U. S. 91.

In *Champion* v. *Ames* (the *Lottery* case) the Court held that a lottery ticket was a subject of commerce. Plainly indicating that the subjects of commerce were not limited to articles of "real or substantial value in themselves" (188 U. S., at 353), the Court nevertheless found that lottery tickets had sufficient value in themselves to constitute a subject matter of commerce. Certainly a contingent stake in an illegal enterprise cannot be said to be a more appropriate subject of commerce than a life insurance policy which not only has fixed cash and loan values but possesses other versatile property incidents as well. Cf. *Guggenheim* v. *Rasquin*, 312 U. S. 254, 257.

The *Pigg* case presented to the Court the question whether a correspondence course constituted commerce. As in the *Lottery* case, the Court emphasized the fact that mere interstate communication furnished a sufficient basis for the application of the Federal commerce power, "especially where, as here, such intercourse and communication really relates to matters of regular, continuous business and to the making of contracts and the transportation of books, papers, etc., appertaining to such business" (217 U. S., at 107). In the case at bar, the communications upon which petitioner's busi-

ness is based likewise relate to "the making of contracts." The sole observable difference in the two cases is that in one policies instead of books are sent in interstate channels and are the subjects of communication. Constitutional power cannot be made to turn upon such a distinction.

These cases are, we believe, inconsistent with *New York Life Insurance Co.* v. *Deer Lodge County*, 231 U. S. 495, the most recent of the series of cases announcing that insurance is not commerce.[41] That case, involving the validity of a Montana tax on insurance companies, is the only one of the group of cases holding that insurance is not commerce that purports to consider the distinctive character of life insurance.[42] The Court, however, accepted the reasoning of the previous insurance cases despite the unique characteristics of the life insurance business and the life insurance policy.

In that case the company contended that the constant use of the mails for the interstate trans-

[41] That the *Deer Lodge* and other insurance cases were concerned primarily with sustaining state legislation affecting insurance, and are distinguishable upon that and other grounds, is pointed out in the Government's brief in No. 354, pp. 22–34.

[42] *Paul* v. *Virginia*, in which the doctrine was originally announced, dealt with fire insurance, which lacks the investment features of level premium life insurance. In *New York Life Insurance Co.* v. *Cravens*, 178 U. S. 389, the Court, though dealing with life insurance, merely perfunctorily repeated the conclusions of the previous cases.

mission of premiums and claims constituted interstate commerce. Without rejecting the factual basis for this contention, the Court rejected the argument for the asserted reason that such interstate transactions were merely the result of a centralized control which is not essential to the carrier's business. Apart from the fact that the distinction between necessity and choice is not a valid one in determining the existence of interstate commerce (cf. *Addyston Pipe & Steel Co.* v. *United States,* 175 U. S. 211, 244–245), it is undeniable that the life insurance business is inherently a centralized one (see *supra,* p. 21, n. 16). Certainly it would be much simpler for a correspondence school to localize its arrangements than for a life insurance company, which quotes rates and erects a risk structure on the basis of national aggregates, to maintain separate geographic reserves and departments of issue and to receive and record premium payments locally.

Just as the *necessity* of interstate communication fails to distinguish the *Pigg* and *Lottery* cases, so the Court's attempted distinction in terms of *subject matter* is equally invalid. Lottery tickets and a correspondence school course were termed "property" in contrast to life insurance policies which the Court termed "mere personal contracts." It cannot be said that the Court was unaware of the value of the life insurance policy or its commercial uses, for it acknowl-

edged that such policies were in the category of instruments "evidencing a valuable right" and apparently in the same class as foreign bills of exchange (231 U. S., at 510).[45] It would appear, however, that in the estimation of the Court, the life insurance policy failed to reach the "property" level of a lottery ticket because its use as property after the issuance of the policy was "by the insured, not by the insurer" (231 U. S., at 510). This distinction plainly has no constitutional validity.

The apparent conflict of the *Deer Lodge* case with established constitutional doctrine is underscored by the decision of this Court in *Securities and Exchange Commission* v. *Joiner Leasing Corp.*, No. 24, this Term, decided November 22, 1943. In that case a leasing corporation acquired by assignment gas and oil leases on a tract of land upon which it arranged for the drilling of a well. Upon the representation that the well was being drilled, the corporation sold assignments of leasehold interests in specific portions of the tract. The sales, held by the Court to be in commerce, were in effect sales of real estate coupled with an economic inducement to share in the fruits of a speculative venture. Certainly a sale of a specific

[45] The Court did not, however, refer to the fact that the life insurance policy of the level premium type has a cash value which not only clothes it with value as a chose in action but also amplifies its commercial possibilities.

interest in real estate is "personal," and as the Court observed in the *Deer Lodge* case (231 U. S., at 510), "certainly nothing can be more immobile." The speculative values annexed to the real estate contract can hardly be said to endow the instrument with qualifications as a subject of commerce superior to those of the life insurance policy. So to hold would be to deny the teaching that "Commerce among the States is not a technical legal conception, but a practical one, drawn from the course of business" (*Swift and Co.* v. *United States*, 196 U. S. 375, 398), and to define the scope of Federal power in terms of the refinements of negotiability. Cf. *Rearick* v. *Pennsylvania*, 203 U. S. 507, 512.

C. THE PURCHASE OF THE SERVICE OF INSURANCE PROTECTION IS IN COMMERCE

As we have seen, the life insurance companies are in commerce because they are engaged in business, in the ordinary sense of that term. Their business activities have substantial tangible attributes, all of which are commercial. The contracts, around which the business revolves, are performed through the transmission and receipt of money; the business is conducted through the constant use of the facilities of interstate communication; and the insurance policy, as a security, is itself an article of commerce.

But even apart from these tangible aspects, if the insurance business were regarded merely as

the performance of the intangible service of furnishing protection, it would still be commercial. Commerce is not limited to the purchase of physical commodities; it encompasses the entire "economic order." [44] If persons are willing to pay for something, tangible or intangible, because of its value to them, the transaction of purchase is a commercial one.

Unquestionably the ordinary person would regard the purchase of life insurance protection as commercial; in the main he would distinguish it from the purchase of tangible commodities only in that it is likely to constitute a more serious drain upon his budget.[45] The fact that life insurance

[44] See the brief for the Government in No. 354, p. 45.

[45] The fact that life insurance is a standard item in the family budget is abundantly demonstrated by numerous budget and cost-of-living studies scientifically allocating basic expenditures on a variety of income levels. Indeed, a field study undertaken by the Securities and Exchange Commission and issued by the Temporary National Economic Committee shows not only that 66% of all men, women, and children in a survey of 2,132 families carried life insurance, but that the lower the family income, the greater the dependence upon life insurance. Monograph No. 2, *Families and their Life Insurance—A Study of 2,132 Massachusetts Families and their Life Insurance Policies*, Washington (1940), pp. 36, 37, 46, 56. In Stecker, M. L., *Intercity Differences in Costs of Living in March 1935, 59 Cities*, W. P. A. Research Monograph XII, Washington (1937), pp. 86, 120, both maintenance and emergency budgets for manual workers contain allowances for life insurance; in Stecker, M. L., *Quantity Budgets For Basic Maintenance and Emergency Standards of Living*, W. P. A. Research Bulletin, Washington (1936), p. 54, it is observed that "Life insurance in some form is considered a necessity by almost all

protection is a service or facility should not be permitted to obscure its fundamental resemblance

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industrial, service, and other manual workers and members of their families." See also Weiss, G. S., Waite, M., and Stitt, L., *Factors to be Considered in Preparing Minimum-Wage Budgets for Women*, U. S. Dept. of Agriculture, Pub. No. 324, pp. 34–35; *Cost of Living for Women Workers and Minors Who Come Under the Provisions of the Minimum Wage Law of the State of New Jersey*, N. J. Dept. of Labor, Minimum Wage Bureau (1938), p. 29 (insurance included both in "adequate" and "sustenance" budget); *Quantity and Cost Budgets for Three Income Levels*, Heller Committee for Research in Social Economics, Berkeley, Cal. (1942), p. 16 (family budget for executive), p. 20 (family budget for white-collar worker), p. 24 (family budget for a wage-earner); *Cost of Living for Women Workers*, N. Y. State Dept. of Labor, Division of Women in Industry (1942), p. 35.

Budgets for dependent families receiving some form of public or private assistance also provide for life insurance payments, even though such insurance contains a savings element. Thus, in the *Chicago Standard Budget for Dependent Families*, Chicago (1937), it is pointed out (at p. 30) that "Every family desires a feeling of security against illness, death, and emergencies. Most low-income families seek this security in various kinds of insurance." This work also points out (at p. 40) that the budget for a self-supporting family must likewise provide for insurance "if it is to avoid dependency when such emergencies as death or incapacity of the wage earner occur." Similarly, in *Budget Standards For Family Agencies in New York City*, New York (1938), life insurance is included as an item in the budget, and it is pointed out (at p. 40) that "Life insurance is commonly carried because of the security it provides. In low-income families where there are no other savings, a small insurance policy can be depended upon to meet unforseen emergencies and provide funeral costs." See also *Suggested Family Budget At Minimum Cost*, Bureau of Aid to Dependent Children, Division of Public

to other commodities.[46] Thus, as in the case of a physical commodity, the insured buys a fixed and measurable amount of protection. The life insurance policy is not a contract of indemnity in the sense that payment will be made only to the extent of proved financial loss; the insured is normally certain to recover the face value of his policy.[47] Moreover, as in the case of any commodity, the buyer can, subject to certain limitations, increase the quantity of protection purchased by paying a larger premium.

As is usually the case with things we buy, the payment of the price entitles the payer to the present enjoyment of the protection bought.

Assistance, Columbus, Ohio (1937), p. 38; Hinton, Jessie, *Budget Guides For Families Receiving Public Assistance*, Md. Board of State Aid and Charities, Baltimore (1937), p. 51; *Report of the Budget Council of Boston* (n. d.), p. 58; *Monthly Minimum Standard Budget, City of Cincinnati*, Department of Public Relief (1940), p. 6; *Cost of Living For Aged Persons*, Bureau of Research and Statistics Memorandum No. 53 (1943), p. 30.

[46] In *Beechley* v. *Mulville*, 102 Iowa 602, 608, 70 N. W. 107, 109, the court stated, "insurance is a commodity. 'Commodity is defined to be that which affords advantage or profit.' Mr. Anderson, in his Law Dictionary, defines the word as 'convenience, privilege, profit, gain: popularly, goods, wares, merchandise.' It is common to speak of selling insurance. It is a term used in insurance business, and law writers have, to quite an extent, adopted it."

[47] The policy is a contract of indemnity in the limited sense that only with an insurable interest in the life insured may take out such a policy, though the insured has been held to have an unlimited insurable interest in his own life. Vance on *Insurance* (2d ed. 1930), pp. 80–81.

Again, as in the case of ordinary wares, the price of insurance is quoted and it is customarily sold on the basis of standardized units. Finally, as with ordinary articles of merchandise, the cost of protection to the consumer bears a definite relationship to the insurer's cost of providing it, a cost which reflects the outlays needed to cover the normally expectable risks, expense loadings, and interest earnings."

The cost of providing insurance protection for those who do not die is an important element in the financial operation of the life insurance business as it is conducted by petitioner. As one actuary [48] points out, under the life insurance system of the type here involved, "every policyholder or member receives something of definite money value which has cost the company something. This is the *protection* or *insurance* which he has had and which he would not have had if he had not undertaken to pay his premium or assessment." Courts

[48] Favorable changes in these items are, as is ideally the case with savings in the production or distribution of physical commodities, passed on to the insured. However, generally speaking, all but the most drastic changes in mortality, interest, and expense rates are, in participating life insurance, reflected not in a change in the premium scale but in a change in the dividend scale. See Rydgren, A. A., "*The Significance of Reduced Interest Earnings*," in *Life Insurance, Trends and Problems, Philadelphia* (1943), pp. 80–81.

[49] Joseph M. Maclean (Associate Actuary, Mutual Life Insurance Co. of N. Y.) in *Life Insurance*, New York and London (1939), pp. 3–4.

similarly have recognized that the protection offered by life insurance must be assigned a pecuniary value. *Lovell* v. *St. Louis Mutual Life Insurance Co.*, 111 U. S. 264, 274; *London Shoe Co.* v. *Commissioner of Internal Revenue*, 80 F. (2d) 230 (C. C. A. 2); *Century Wood Preserving Co.* v. *Commissioner of Internal Revenue*, 69 F. (2d) 967 (C. C. A. 3).

Economists and insurance authorities have likewise described the obtaining of insurance protection as in the same economic category as the purchase of tangible commodities. As one authority [*] has said:

> But it is not so much the delivery of the paper which represents the contract as the purpose contemplated in the contract which should claim our special attention. Insurance must be regarded not as the mere delivery of a policy, but as the exchange of an economic good, intangible it is true, yet real, for a definite consideration; and here, perhaps lies the difficulty in seeing that insurance at bottom is an economic good, resembling tangible commodities which are bought and sold. Insurance companies

[*] Huebner, S. S., "*Federal Supervision and Regulation of Insurance*," Annals of the American Academy of Political Science, Vol. XXVI, No. 3, Nov. 1905, pp. 703–704. In another place (*The Economics of Life Insurance*, New York and London (1927), p. 120), this writer points out that "Life insurance is not intangible and vague * * *. It's very purpose is to render tangible and definite the intangible elements in our economic life."

> send their agents from state to state and from country to country to sell to the public for a stipulated price a certain utility, a right to be indemnified upon the happening of a contingency, or in other words, an economic good. If insurance were not a utility of actual value, there would not be so many millions paying their hard cash in order to obtain it.

The precise nature of the economic service which insurance performs has thus been described by Professor E. R. A. Seligman:[51]

> Like transportation, insurance falls under the head of exchange of wealth, while exchange, as we know, is itself a species of production. Improved transportation reduces the cost of having a commodity in one place become a more valuable commodity in another place; improved insurance reduces the cost of having the uncertainty of the future change into the more valuable certainty of the present. Transportation overcomes the disadvantages of space; insurance overcomes the disadvantages of time. Transportation is productive because it increases space utilities; insurance is productive because it increases time utilities.

The purchase of life insurance protection is thus commercial in character because it involves the classic type of commercial transaction: the exchange of money for a value. Moreover, such a

[51] In *Principles of Economics*, N. Y. (12th Ed. 1929), p. 607.

transaction is not isolated in character; insurance protection is bought by millions of Americans and is regarded as a necessity.[52] Eloquent proof of these facts is present in the size, premium income, and assets of the American insurance companies. See p. 19, *supra*.

That commerce is not limited in scope to the purchase of tangibles has been frequently recognized. In his concurring opinion in *Gibbons* v. *Ogden*, 9 Wheat. 1, 229 (quoted in the Government's brief in No. 354, p. 36), Mr. Justice Johnson stated that commerce included—

> labor, exchange, transportation, intelligence, care, and various mediums of exchange * * *.

An insurance transaction involves the entry into commerce of "intelligence, care, and various mediums of exchange."

In *Jordan* v. *Tashiro*, 278 U. S. 123, the Court construed a treaty between the United States and Japan authorizing Japanese citizens to lease land "for residential and commercial purposes, and generally to do anything incident to or necessary for trade upon the same terms as native citizens," to include the leasing of land for and the operation of a hospital. And in *American Medical Association* v. *United States*, 317 U. S. 519, the Court held that a plan for the performance of group medical service and care was trade. We

[52] See n. 45, *supra*, pp. 37–39.

believe that the Court's decision that Group Health Association was "engaged in business or trade" (317 U. S. at 528) establishes that life insurance is commerce. If provision for benefits in kind of a highly personal nature upon the occurrence of the contingency of ill health is a "trade" then certainly the broader term "commerce" includes within it the payments of money upon the occurrence of death. If an arrangement which is designed to protect the individual against the risks of excessive medical expenses is subject to the commerce power, what basis exists for excluding from that power a type of insurance much more broadly protective in scope, which has, indeed, come to be regarded as an every-day necessity and which plays a vital role in the functioning of our entire economy?

Insurance protection is plainly a commercial commodity in the same category as other services which have been held subject to Federal power. See, in addition to the cases discussed above, *Electric Bond and Share Co.* v. *Securities and Exchange Commission,* 303 U. S. 419, 432; *Atlantic Cleaners and Dyers* v. *United States,* 286 U. S. 427; *United States* v. *Union Pacific R. R. Co.,* 226 U. S. 61. The provision of a service for money is commerce. The relationship between petitioner and its members is not unlike the servicing arrangement between the defendant holding company and its sub-

sidiaries in the *Electric Bond and Share* case, *supra*. Here, as in that case, the interstate distribution of a service "involves continuous and extensive use of the mails and instrumentalities of interstate commerce * * *" (303 U. S. at 432–433). The transmission of applications and premiums which initiate the carrier's liability, of policies which describe it, of premiums which keep it alive, of death claims and benefits which terminate it, are all unquestionably commerce because they involve either dealings in money, an instrumentality of commerce, or "communication of a business nature" (*Associated Press* v. *National Labor Relations Board,* 301 U. S 103, 128).

D. THE LIFE INSURANCE BUSINESS SUBSTANTIALLY AFFECTS INTERSTATE COMMERCE BECAUSE OF ITS IMPORTANCE AS A CREDIT INSTITUTION

Whether or not the statements found in *Paul* v. *Virginia* and other cases cited by petitioner (Br. 15) to the effect that insurance is not commerce have present vitality, petitioner is, in any event, subject to the Act. As the court below held (R. 235), "Even though petitioner's contention that it is not directly engaged in interstate commerce be tenable, it would still be faced with an unsurmountable barrier. As already noted, the power of the Board is not limited to commerce but includes 'affecting commerce,' which Congress has

defined as 'burdening or obstructing commerce of the free flow of commerce.' "[53] Cf. *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197.

From what has been already said with respect to the resemblance of a life insurance policy to an investment contract (*supra*, pp. 29-31), it is apparent that life insurance is an investment industry. The advance accumulation of capital against the occurrence of future contingencies which is implicit in the level-premium system of life insurance, the fact that the premium rates reflect an anticipated investment yield, and the banking functions engaged in by life insurance companies, including petitioner—all of these features, which are inherent in the life insurance business, combine to place the life insurance companies in a dominant position in the investment field. Moreover, since the funds available to the companies for investment are savings rather than short-term credits, they are peculiarly adaptable to the construction and development of commercial enter-

[53] Moreover, the same consideration condemns petitioner's attempt to bring itself outside of the scope of the commerce power as exercised in the Act by resort to its "nonprofit" character. "It is the effect upon interstate or foreign commerce, not the source of the injury, which is the criterion." *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 222; *United States* v. *Wrightwood Dairy Co.*, 315 U. S. 110, 114.

prises.[54] Finally, considerations of safety and the shifting demands of the investment market have resulted in such extensive diversification and geographic dispersion of insurance company investments that every vital aspect of our productive economy has been influenced by the investment activities of insurance companies.[55]

The extent of life insurance investment activities may be quickly gleaned from the fact that the 26 largest life insurance companies held in 1938 an average of less than 3 percent of their huge assets in cash.[56] At the end of 1941, petitioner's cash assets constituted a comparable percentage of its total assets (Bd. Exh. 9, p. 4). Life insurance companies have an annual income of over $5,000,000,000, and assets available for investment of 35 billion dollars.[57] It has been esti-

[54] See Gesell, G. A. and Howe, E. J. *Study of Legal Reserve Life Insurance Companies*, Temporary National Economic Committee, Monograph No. 28, Washington (1941), pp. 342, 365.

[55] The authorities referred to in the preceding footnote, *op. cit.*, at p. 6, have pointed out that "the purely dimensional aspects of the life insurance business are so staggering, . . . that it is difficult to appreciate the significance of insurance in the national economy." See also Moulton, H. G., *The Financial Organization of Society*, Chicago (1931), p. 316; Timberg, *Insurance and Interstate Commerce*, 50 Yale Law Journal, 959–962, 1006–1017.

[56] Gesell and Howe, *op. cit.*, *supra*, n. 54, at p. 355.

[57] *Spectator Insurance Yearbook, Life Insurance*, 1943, pp. i, 171A, 415b.

mated [58] that as of the beginning of 1938, the life insurance industry held 11.6 percent of our entire federal debt, 6.7 percent of the municipal and state debt, 17.4 percent of the railway debt, 18.2 percent of the utility debt, 10.5 percent of all farm mortgages, and 13 percent of all urban mortgages. In 1937 and 1938 the life insurance industry purchased more corporate bond and note issues than all other investment groups combined.[59]

The credit which is thus extended to interstate enterprises and instrumentalities is vitally necessary to their functioning.[60] The extensive character of the companies' investment activity in interstate industrial and transportation enterprises combined with the fact that such activity is dictated by the nature of the insurance business justifies the conclusion that the relationship of the companies to interstate commerce is close and substantial.[61]

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[58] By Ernest Howe, Chief Financial Adviser, Insurance Section, Securities and Exchange Commission in *Hearings* before the Temporary National Economic Committee, 76th Congress, 3rd Sess., Washington (1940), pp. 14700–14726.

[59] *Hearings*, cited in the preceding footnote, at pp. 1217, 1218, 1222.

[60] The dependence of commerce upon such credit is, as the court noted in *National Labor Relations Board* v. *Bank of America*, 130 F. (2d) 624, 626 (C. C. A. 9), certiorari denied, 318 U. S. 791, "as marked as was its dependence upon the electric energy furnished by the intrastate utilities involved in *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197."

[61] *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 41.

In its investment activities petitioner is a reduced image of the industry of which it is a part. It, too, amasses the savings of its members which it redistributes into the channels of industry and trade. It has assets of over $30,000,000, most of which it must invest if it is to operate successfully. Its investment portfolio shows that, like the industry as a whole, it supplies credit to interstate enterprise. As of December 31, 1941, it owned bonds of a large number of railroad, utility, and industrial corporations engaged in interstate commerce (Bd. Exh. 9, pp. 14 L to 14 N). The acquisition of securities is an important part of petitioner's business. That this is so is readily seen from the fact that in 1941 alone, petitioner acquired securities in the amount of $11,000,000, and sold or redeemed securities in the amount of $7,000,000 (Bd. Exh. 9, pp. 17 D and 17 L).

We submit that an industry and an enterprise which in the necessary and regular course of business is a necessary source of credit to industries in interstate commerce is within the scope of the federal power to relieve that commerce of burdens and obstructions. *Consolidated Edison Co.* v. *National Labor Relations Board,* 305 U. S. 197; *National Labor Relations Board* v. *Bank of America,* 130 F. (2d) 624, 626 (C. C. A. 9), certiorari denied, 318 U. S. 791. And it is of no constitutional significance either that petitioner's contributions to such commerce are relatively small

(*Wickard* v. *Filburn*, 317 U. S. 111; *National Labor Relations Board* v. *Fainblatt*, 306 U. S. 601, 606; *United States* v. *Darby*, 312 U. S. 100, 123; *National Labor Relations Board* v. *Friedman-Harry Marks Clothing Co.*, 301 U. S. 58), or that a substitute supply of credit would be available in the event of an interruption or cessation of petitioner's activities because of a labor dispute. *National Labor Relations Board* v. *Bradford Dyeing Ass'n*, 310 U. S. 318, 326.

That a cessation or restriction of petitioner's operation would result from a strike is patent. The operations of acknowledgment, recording and depositing of premiums, prime requisites to the orderly functioning of petitioner's business, would be rendered impossible. The regular movement of funds into the investment market would be halted at its source in Chicago and business would be deprived of capital, for want of essential administrative machinery. Similarly, the handling of new applications with the care required to secure and maintain the risk structure would of necessity be dispensed with. Collections of premiums in the field would inevitably suffer because of the disruption of the regular clerical and supervisory procedures in the central office. The placement of industrial and commercial investments would in consequence be adversely affected not only because of the interruption to the operations by which lending activities are car-

ried out, but also because of the shutting off of new funds. Normal handling, management, liquidation and redistribution of old investments would likewise be affected.[62]

II

Congress Did Not Intend to Exempt Employers Engaged in the Insurance Business From the National Labor Relations Act

The National Labor Relations Act authorizes the Board to prevent unfair labor practices "affecting commerce." Section 10 (a). Commerce is defined (Section 2 (6)) as meaning "trade, traffic, commerce, transportation, or communication among the several states." "Affecting commerce" is defined (Section 2 (7)) as meaning "in commerce, or burdening or obstructing commerce, or the free flow of commerce, or having led or tending to lead to a labor dispute burden-

[62] As early as 1916 a strike of insurance agents in New Jersey, New York, and Pennsylvania necessitated the intervention of the United States Department of Labor. U. S. Department of Labor, *Annual Report, 1917*, pp. 41, 58; *ibid.*, *Annual Report*, 1918, p. 52; New York Times, July 26, 1916, p. 6:3, July 28, 1916, p. 9:6, July 29, 1916, p. 10:5, August 4, 1916, p. 2:5, August 12, 1916, p. 7:8; *The Prudential Strike*, Weekly Underwriter, July 29, 1916, pp. 106–107; *The Insurance Strike*, The Spectator, August 3, 1916, p. 45; New Jersey Department of Labor, *39th Annual Report of the N. J. Bureau of Industrial Statistics for the Year ending October 31, 1916*, p. 262. An even earlier strike of the agents of the Metropolitan Life Insurance Company is mentioned in *The Insurance Strike*, Pacific Underwriter, July 25, 1916, p. 266.

ing or obstructing commerce, or the free flow of commerce."

The test of the Act's application, as set forth in *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 41, is: Would "stoppage of * * * operations by industrial strife" in the enterprise in question result in substantial interruption to or interference with interstate commerce? When the operations in question are inherently interstate commerce, this test is satisfied without further showing. *Washington, Virginia & Maryland Coach Co.* v. *National Labor Relations Board*, 301 U. S. 142; *Associated Press* v. *National Labor Relations Board*, 301 U. S. 103. Where the operations are not interstate, jurisdiction is established when the conduct of interstate commerce is dependent upon the operations in question. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 41; *Santa Cruz Fruit Packing Co.* v. *National Labor Relations Board*, 303 U. S. 453; *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197; *National Labor Relations Board* v. *Fainblatt*, 306 U. S. 601.

We believe that the Act applies to petitioner upon each of these two grounds. Petitioner is subject to congressional regulation under the commerce power because it is directly engaged in interstate commerce. see pp. 19–45, *supra*. Moreover, an independent basis for the application of

the Act to petitioner is created by the effect of its operations upon interstate commerce. See pp. 45–51, *supra*.

Petitioner argues, however, that because of this Court's prior decisions that insurance was not commerce, Congress did not intend the Act to reach the insurance industry. The Court has never held respecting any aspect of the insurance business that it did not "affect commerce"; indeed, *Thames & Mersey Ins. Co.* v. *United States*, 237 U. S. 19, strongly suggests the contrary conclusion. Thus, if Congress had intended to restrict the word "commerce" in the Act to commerce as defined by previous decisions of the Court, prior decisions in no way afford a standard as to congressional intent in using the phrase "affecting commerce."

Petitioner's contention is similar to that made by appellees in No. 354, and the answer is in many respects the same as that suggested in Point II of our brief in that case. The language and history of the National Labor Relations Act, as of the Sherman Act, show an intention to exercise all congressional power under the commerce clause, an understanding that the application of the constitutional terms employed would be left to the courts, and a recognition that in prior decisions this Court had held production not subject to the commerce power. The legislative atmosphere at the time of the passage of the Na-

tional Labor Relations Act, however, was much more challenging to decisions restricting the scope of the commerce power; it was undoubtedly contemplated that the Court would be called upon to reexamine some of its past rulings.

Furthermore, many of the arguments raised by appellees in No. 354 are not available to petitioner here. It cannot be—and is not—claimed that Congress could not have intended the Labor Relations Act to apply to the insurance business because of special circumstances which differentiate insurance from other industries. Whatever may be said as to the need for special treatment of the insurance business from the standpoint of competition has no counterpart in the labor field. There is no reason why insurance labor relations cannot be governed by the same rules applicable to industry generally.

Nor is it argued here that application of the Labor Relations Act to insurance will nullify any system of state legislation. We know of no state law relating to the insurance industry which might be inconsistent with the Act.

Finally, it cannot be, and is not, contended here that there has been any long administrative or other practice which has caused the insurance companies to believe that they were not subject to the Act. The National Labor Relations Act has been law only eight years, not fifty. In that time the Board has entertained 19 proceedings involv-

ing insurance companies,"[*] and this is the first of these cases which has been taken to court.

Inasmuch as petitioner's argument rests upon the supposed intention of Congress to freeze into the Act the constitutional doctrine of prior decisions, it is necessary to elaborate only in that connection. The statutory definition of "commerce," which uses the language of the Constitution with precautionary additions, obviously was intended to be as broad as the constitutional

[*] *Matter of Washington Branch of the Sun Life Insurance Company*, 15 N. L. R. B. 817 (1939); *Matter of Eureka Maryland Assurance Corp.*, 17 N. L. R. B. 381 (1939); *Matter of Home Beneficial Association of Richmond, Va.*, 17 N. L. R. B. 1027 (1939); *Matter of Equitable Life Insurance Co.*, 21 N. L. R. B. 37 (1940); *Matter of Life Insurance Co. of Virginia*, 24 N. L. R. B. 411 (1940); *Matter of John Hancock Mutual Life Insurance Co.*, 26 N. L. R. B. 1024 (1940); *Matter of Life Insurance Co. of Virginia*, 29 N. L. R. B. 246 (1941); *Matter of Life Insurance Co. of Virginia*, 31 N. L. R. B. 674 (1941); *Matter of Supreme Liberty Life Insurance Co.*, 32 N. L. R. B. 94 (1941); *Matter of Life Insurance Co. of Virginia*, 38 N. L. R. B. 20 (1942); *Matter of Colonial Life Insurance Co. of America*, 42 N. L. R. B. 1177 (1942); *Matter of Metropolitan Life Insurance Co.*, 43 N. L. R. B. 962 (1942); *Matter of Prudential Insurance Co. of America*, 46 N. L. R. B. 430 (1942); *Matter of Northwestern Mutual Fire Association, Northwest Casualty Company, & E. M. Greenwood*, 46 N. L. R. B. 825 (1943); *Matter of Peoples Life Insurance Co. of Washington, D. C.*, 46 N. L. R. B. 1115 (1943); *Matter of Prudential Insurance Co. of America*, 47 N. L. R. B. 1103 (1943); *Matter of Prudential Insurance Co. of America*, 49 N. L. R. B. 450 (1943); *Matter of Life and Casualty Insurance Co. of Tennessee*, 53 N. L. R. B. No. 216 (1943); and the instant case.

phrase. No one has suggested heretofore that the reach of the Act was narrower than the Constitution permits. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 31–32 and 76, 94–100 (dissent). On the contrary, this Court itself has stated (*National Labor Relations Board* v. *Fainblatt*, 306 U. S. 601, 607) that:

> The Act on its face thus evidences the intention of Congress to exercise whatever power is constitutionally given to it to regulate commerce * * *.

Other cases also manifest an understanding that the limits of the Act are coextensive with those of the commerce clause. *Santa Cruz Fruit Packing Co.* v. *National Labor Relations Board*, 303 U. S. 453; *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197.

The legislative history of the Act shows both that Congress wished to exercise to the fullest extent the federal commerce power and that it expected the Court in applying the Act to give the Constitution a broader interpretation than had been placed on it in many prior decisions.

The statement in the Senate Report which accompanied the bill which became the Act[64] is unequivocal that:

> * * * it is intended in this bill to exercise the full constitutional power of Congress to prevent the described unfair labor practices * * *.

[64] Sen. Rep. No. 573, 74th Cong., 1st Sess., pp. 18, 19.

* * * * *

> While this bill of course does not intend to go beyond the constitutional power of Congress, as that power may be marked out by the courts, it seeks the full limit of that power in preventing these unfair labor practices. It seeks to prevent them, whether they burden interstate commerce by causing strikes, or by occurring in the stream of interstate commerce, or by overturning the balance of economic forces upon which the full flow of commerce depends.

Similarly, Senator Wagner, sponsor of the bill in the Senate, stated during the debates preceding enactment:[65]

> * * * the Federal Government has the power under the Constitution to prevent any burden whatsoever upon interstate commerce. And there can be no doubt that Congress intends this power to be exercised in full to prevent unfair practices that cause or threaten to cause even the slightest burden.

And in answer to a query from Senator Costigan:[66]

> Is it proper to say that the measure is designed to apply to all industries which affect commerce?

Senator Wagner replied:

> That is the intent.

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[65] 79 Cong. Rec. 7572.

[66] 79 Cong. Rec. 7573.

Subsequent to the passage of the bill by the Senate but prior to its reaching the floor of the House, this Court rendered its opinion in *Schechter Corp. v. United States,* 295 U. S. 495. A few days after the decision in the *Schechter* case Congressman Connery, who was the sponsor of the bill in the House as well as chairman of the committee reporting the bill, stated: [67]

> We are faced now with a barrage of propaganda from inspired sources to the effect that in view of the recent Court decisions the Congress has no alternative but to abandon its legislative program and go home. Implications are being read into those decisions in an endeavor to make them applicable to other situations and problems not before the Court. The President, in his press conference on Friday, painted a vivid picture of national impotence to cope with national problems which would be our plight, if the Supreme Court in future cases does not limit its decision in the Schechter case to the particular facts before the Court.
>
> * * * * *
>
> In view of this salutary reminder by the Supreme Court that its decisions are controlling only on the facts of the case before it, we are guilty of no disrespect for that tribunal in pressing for the passage of the Wagner-Connery bill. I have no doubt that Congress believes in the principles and pur-

[67] 79 Cong. Rec. 8540.

> poses of the bill, and this being so, the Congress would be shirking its plain duty if dubious, and I believe unwarranted implications from recent court decisions stampede it into an abandonment of its legislative functions. This is no time to yield to defeatist talk and haul down the flag.

Congresswoman Norton, second ranking member of the House Committee in charge of the bill, in advocating passage of the bill, stated:[68]

> We are living in a changing period. Conditions are not what they were when the Constitution was written. I have the greatest respect for the Constitution, but am enough of a realist to believe that we are living in an age that demands human legislation if we are to continue as a happy Nation * * *.

Other supporters of the bill in the House expressed similar views:

> Mr. Cox. Does the gentleman not accept the decision of the Supreme Court as the right interpretation of the law?
>
> Mr. Wood. No; I do not. I differ with the Supreme Court and I have the right to differ with them.[69]

> Mr. Mead. Mr. Chairman, the bill which we are considering this afternoon, known as the "Wagner-Connery labor-disputes bill" is more necessary now perhaps than when it was originally introduced. That

[68] 79 Cong. Rec. 9709.

[69] 79 Cong. Rec. 8816.

> condition has been brought about by the recent action of the Supreme Court in invalidating the National Recovery Act. * * * * * * There are some, however, who may be reluctant to vote for this bill because of its apparent invasion of the rights of our States. There are others who may find fault with it on constitutional grounds. To the former I will say that this measure is intended to apply to those workers whose employment either directly or indirectly comes under the commerce clause of the Constitution. * * *
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> * * * * * *
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> The rapid growth and development of industry, the concentration of wealth in the hands of a few, the uneven distribution of the wealth produced in the country, the modern methods of communication and transportation, the compounding of intrastate factory units into the national and international industrial organizations, all this has brought about a compelling change in matters such as we are considering in this proposed legislation.[70]

The whole tenor of the debates on the floor of Congress makes it clear beyond any doubt that Congress did not intend to write into the Act any exceptions based on prior decisions of the Court that any activity was beyond the federal commerce power. The Act was passed with the repeatedly expressed wish that the Court in interpreting it

[70] 79 Cong. Rec. 9710–9711.

appraise the Constitution anew in the light of the necessity of federal encouragement of collective bargaining in its relation to the protection of commerce. Certainly nothing could be more repugnant to the intent of those who enacted the Act than that decisions of the last century declaring insurance not to be commerce should limit the full application of the Act to all those to whom it could constitutionally be applied. There is no suggestion in the legislative history of the Act that all "trade" was to be safeguarded save the insurance trade, all "traffic," save the traffic in insurance policies, premiums and benefits, all "transportation or communication" save that involving the insurance business.[71]

The sweeping definition of the term "commerce" which is contained in the Act is not surprising. Congress did not seek to protect a particular type of commerce, as in the Railway Labor Act for example, but rather to regulate the labor relations of all enterprises subject to the reach of the commerce power. Petitioner's contention with respect to the insurance cases attributes to Congress a concern with the particular types of employers and categories of commerce which is wholly alien to the legislation. Congress was not thinking in terms of particular industries—and no intention to exempt any industry coming within the meaning of the words employed in the Act can fairly be attributed to it.

[71] The words quoted are from Section 2 (6) of the Act.

III

Petitioner's Status as a Fraternal Benefit Society Does Not Exempt It From the Act

Petitioner argues that even if the life-insurance business might be held to be in commerce, it is a fraternal, benevolent, non-profit organization not engaged in the insurance business and accordingly not in commerce. It is contended that petitioner's insurance activities are "incidental" (Br. pp. 22, 31) to its main purposes, and that it must be regarded as non-commercial because the Illinois Insurance Code declares it to be a "charitable and benevolent institution." We think that the facts set forth in the Statement (pp. 2–9, *supra*), in themselves refute these propositions.

A. PETITIONER IS IN THE INSURANCE BUSINESS

The record shows that petitioner engages in all the activities of the ordinary mutual life insurance company. Like the old-line insurance companies it issues a variety of life insurance and endowment policies, pays the expenses of its business out of first year contributions (R. 105), offers cash-surrender values, non-forfeiture options, settlement options, and dividends.[72] Its rates are

[72] That this "commercial" system has not handicapped petitioner would appear from the fact that it is among the ten largest of the American fraternal benefit societies in terms of insurance in force and total income. 49 *Statistics Fraternal Societies* (1943), pp. 26–28.

comparable to ordinary mutual insurance rates.[73] Petitioner employs salesmen to sell its insurance in the same manner as the ordinary commercial company. Only a very small amount—about 5 percent—of petitioner's income and expenditures are for its benevolent activities.[74] Persons may not join the organization without taking out an insurance policy; "social members" are no longer admitted (R. 7–8, 54). In view of these facts it is difficult to understand petitioner's statement that its insurance activities are "but incidental to the main objects of its existence" (R. 22). Whatever may have been the purposes of its founders, as expressed in the eloquent preamble to its constitution (R. 52), clearly petitioner is now primarily an insurance company.

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[73] Compare the quotations of participating life insurance rates in *Best's Illustrations* (1943), with the rates quoted in Petitioner's Manual (Bd. Exh. 10).

[74] Petitioner asserts that in 1941 benevolent payments were $252,210 (R. 170) and insurance benefit payments $1,845,126 (R. 105). These figures do not take into account the large portion of petitioner's insurance income retained as a reserve fund or used to pay expenses; petitioner's total income in 1941 was $5,717,344 (R. 105). Petitioner also asserts that since its organization, it has spent $7,109,786 for charitable purposes, and $38,076,756 in "mortuary claims paid" (R. 167–168). It should be noted that this apparently large sum given to charity covers the period from 1880 to 1940 (R. 167). The history of the fraternal movement shows that the societies have abandoned their prior benevolent emphasis (*infra*, p. 64–69), and petitioner's appeal to its charitable origin does not change the nature of its present insurance activities.

"From the simple and modest beginning of sixty years ago", petitioner tells its membership, "the Polish National Alliance in recent times has greatly expanded and developed into a large fraternal insurance organization. While ideologically it has remained ever true to its principles and today pursues its ideals with vital eagerness, through its expansion it has entered the field of sharp competition of business institutions.

"Meeting the challenge of new demands, we have, of necessity, introduced more efficient business methods, invited new suggestions, and discarded outmoded plans of operation. Accordingly, in the past few years a large variety of marketable certificates of insurance have been issued, ranging from the ordinary life type to that of the endowment kind * * *" (R. 107).

Petitioner in these terms acknowledges its participation in the general evolution of the fraternal benefit society which has in recent decades emerged from the "protective" and "beneficial" orders and brotherhoods of an earlier day. A fraternal benefit society such as petitioner must be distinguished from those orders which provide for contributions to members in distress, indeterminate lump sum payments on the event of disability, or for burial and benefits in kind (such as care for aged members). Like the ordinary beneficial associations and fraternal orders, fraternal benefit societies are characterized by a lodge

system, ritualism, and representative government. But in addition to and in place of charitable and related programs conceived as a method of giving tangible expression to the benevolence inherent in fraternal orders, fraternal benefit societies adopted as one of their activities the payment of insurance benefits to the dependents of members.[75]

Fraternal benefit societies originally financed the payment of benefits through an assessment scheme whereby the dependents of the certificate holders received the proceeds of a flat assessment upon all of the surviving members. This post-mortem assessment system resulted in increasingly burdensome costs with the advancing age level of the society. This burden fell with particular weight upon the more youthful members, who, because of their lower mortality experience, were required to pay a higher price for protection than their lower mortality warranted. Since it was cheaper for this class to form a new society than to join an established one, a great many fraternal organizations failed.[76]

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[75] See Nichols, *Fraternal Insurance in the United States: Its Origin, Development, Character, and Existing Status*, 70 Annals of the American Academy 109 (1921); *Taxable Status of Fraternal Insurance*, 47 Yale Law J. 965; Illinois Insurance Code, Ill. Rev. Stat. (1941), Ch. 73, Art. XVII, Sec. 308; *Beneficial Associations*, 10 C. J. S. § 1.

[76] It has been estimated that of the 3,500 mutual assessment associations organized between 1870 and 1910, no less than 3,000 failed after an average life of 15 years. *Fra-*

The unworkability of this and other assessment schemes resulted in the adoption by fraternals of the protective features long characteristic of old line insurance. Chief among these has been the acceptance of the level premium plan and the accumulation of a reserve.[77] Through the use of mortality tables, interest assumptions and expense estimates, premiums were calculated on a scientific basis so as to keep them level at the initial rate. Since a level premium to cover an increasing hazard implies an overcharge in the early years which must be conserved for later years,[78] fraternal insurance acquired the same investment characteristics as ordinary life insurance. This excess thus accumulated and invested constitutes, as in old line companies, a reserve which is scientifically calculable and apportionable to each policy.[79]

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ternal Orders, 6 Encyc. Soc. Sciences (1931) 423, 424. Of the 208 large fraternal benefit societies reporting in 1936, only 8 antedated 1871 and only 38 were in existence prior to 1882. 42 *Statistics Fraternal Societies* (1936) 24.

[77] A history of this transformation appears in Basye, Walter, *History and Operation of Fraternal Insurance*, Rochester (1919). The fraternals were placed upon a reserve basis by the so-called "Mobile" (1910) and "New York Conference" (1912) bills. They are described in Basye, pp. 108–190.

[78] *New York Life Insurance Co.* v. *Statham*, 93 U. S. 24, 30, 34.

[79] See 16 *Proceedings, National Fraternal Congress of America*, 157 (1929): "With the adoption of adequate rates

The transformation in the rate structure of the fraternal benefit society has resulted in the diversification of its insurance activity. The accumulation of a reserve has made possible duplication of the standard attractions of the old line life companies such as cash-surrender and loan values, paid-up insurance, and extended insurance values. Endowment, term, and juvenile insurance are now familiar offerings of the fraternal societies. Also, evidencing the commercialization of the societies has been the trend toward elimination of any restrictions upon the class of those who may be named as beneficiaries.[80]

Moreover, the entire relationship of the individual to the society has been altered. From a mere adjunct of the society, an "insurance rank" offered optionally to members,[81] insurance has become the dominant activity of the society. Mem-

based upon mortality tables used by old line companies it was deemed unfair, inequitable, and impractical to deprive the member of the benefit of the reserve accumulation.

"It would be difficult to acquire new membership and retain those already members, if the member paid a level rate equivalent to that exacted by the insurance companies, and the society forfeited the reserves while the insurance company granted reserve options."

[80] Illinois Insurance Code, Ill. Rev. Stat. (1941), Ch. 73, Art. XVII, Sec. 286; Proposed Amendments to New York Conference Bill, 15 *Proceedings, National Fraternal Congress of America*, 251 (1928); 16 *Proceedings, National Fraternal Congress of America*, 107 (1929).

[81] *Knights of Pythias* v. *Kalinski*, 163 U. S. 289.

bership and coverage have become synonymous, and qualifications for membership relate fully as much to eligibility for insurance as to other qualifications. Formerly a participant in a fellowship devoted to certain common social or cultural aims who was called upon at irregular intervals to relieve the distress of a fellow lodge member, the fraternal society member today has become primarily an insurance risk entitled to fixed insurance benefits upon his death. The variety of insurance sold and the decline of the lodge as a selling medium have made commonplace paid solicitors who are trained for this work (*supra*, p. 8). Except for perfunctory retention of ritualistic requirements, representative government and the so-called "open contract" provision whereby the society reserves the privilege of readjusting rates if the future so demands, there are no real differences between the fraternal insurance society and the mutual life insurance company. As one commentator has bluntly put it, fraternal societies are "primarily mutual life insurance companies, rituals and the other fraternal features being utilized as promotional devices in the selling of insurance or similar benefits."[82] The fraternalists

[82] Gist, N. P., *Secret Societies: A Cultural Study of Fraternalism in the United States*, University of Missouri Studies, Vol. XV, No. 4, p. 156; see also, Bureau of Research and Statistics, Social Security Board, Report No. 6, *Cash Benefits Under Voluntary Disability Insurance in the United States*, pp. 72–73; *Fraternal Life Insurance*, Indianapolis (1942), p. 113.

themselves have proclaimed the fact that they are in the life insurance business: "Many of us believe the primary purpose of the fraternal benefit society of today is life insurance. The societies are now and have been for many years in the 'life insurance business.'"[23]

It is significant that, although calling fraternal benefit societies "benevolent and charitable," Illinois regulates them in its insurance code and subjects them to substantially the same requirements as other life insurance companies. Illinois Insurance Code, Ill. Rev. Stat. (1941), Ch. 73, Art. XVII, Sec. 315.

It is thus plain that whatever petitioner may formerly have been, it is now in the life insurance business. If petitioner is engaged in the insurance business, it is immaterial what other enterprises—charitable or otherwise—it conducts. The Board did not find that petitioner's benevolent activities affected commerce. The mere fact that a company engaged in business is also engaged in charity or benevolence does not render the conduct of the former any the less commercial. Or, conversely, the fact that a charitable organization owns and operates a business will not entitle the latter aspect of its activities to treatment as a charity.

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[23] Report of the Committee on Statutory Legislation, 16 *Proceedings, National Fraternal Congress of America*, 155 (1929).

B. PETITIONER IS NOT A CHARITABLE AND NON-PROFIT ORGANIZATION

Even if petitioner were held not to be an insurance company in the ordinary sense, this would not mean that it was not engaged in commerce. Its activities in soliciting interstate purchases of "benefits" and in performing its contracts through interstate channels constitute interstate commerce, whether or not it is in the insurance business in the strict sense. No one has suggested that the commerce clause applies *only* to insurance companies.

Petitioner argues, however, that it is not in commerce because it is a non-profit and charitable organization. This is both inaccurate and irrelevant.

Although a small portion of petitioner's funds are used for benevolent purposes, this does not make petitioner a charitable organization. The object of its insurance business is to benefit its members and their families. They are not required to be in need of charity. Nor are any benefits given them without charge.[84] On the contrary,

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[84] Compare *Hassett* v. *Associated Hospital Service Corporation*, 125 F. (2d) 611, 614 (C. C. A. 1), certiorari denied, 316 U. S. 672, in which the court declared with respect to a group hospitalization plan:

"* * * The subscribers consider themselves neither charitable donors nor the recipients of charity. The corporate capital is not composed of charitable contributions but fees exacted from subscribers. Without the subscription payments the corporation could not function. Membership is not limited to the needy but, as a matter of fact, is composed largely of the middle class and well-to-do. It is diffi-

they are required to pay the customary premiums for what they receive. Indeed, petitioner employs the Retail Credit Company to investigate the financial responsibility of each applicant before he can become a member (see p. 9, *supra*).

Petitioner apparently considers itself to be a non-profit organization because it is owned and controlled by its policyholders and not for the financial advantage of outside stockholders. But this does not mean that petitioner does not make profits on its business, but only that the owners to whom the profits are distributed in the form of dividends are also policyholders. In this respect, petitioner's position is the same as that of any mutual insurance company. This Court has recognized that the returns in the form of dividends to members yielded by a participating insurance plan of the type operated by petitioner are properly classifiable as profits. In *Penn Mutual Co.* v. *Lederer*, 252 U. S. 523, 534, the Court said:

> The fact that the investment resulting in accumulation or dividend is made by a cooperative as distinguished from a capitalis-

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cult to distinguish the plaintiff corporation from a mutual insurance company or an employee benefit plan. Here we have what is essentially a business arrangement under which a group of people have banded themselves together to purchase at rates as low as possible hospital care in the event of sickness or accident. These rates are subject to approval by the Massachusetts Commissioner of Insurance. Such a corporation is not charitable. * * *"

> tic concern does not prevent the amount thereof being properly deemed a profit on the investment.

In *American Medical Association* v. *United States,* 317 U. S. 519, 528, the Court stated, citing cases:

> The fact that it is cooperative, and procures service and facilities on behalf of its members only, does not remove its activities from the sphere of business.

See, also, *Hassett* v. *Associated Hospital Service Corporation, supra.*

C. EVEN IF PETITIONER WERE A NON-PROFIT ORGANIZATION, IT WOULD BE SUBJECT TO THE COMMERCE POWER

Even if the relatively small amount of benevolent activity in which petitioner engages clothed all of its operations with a benevolent character, it would nevertheless be subject to the commerce power and to the Act. It is well settled that the existence of a narrowly "commercial" motive or profit incentive does not fix the limits of the commerce power. *Caminetti* v. *United States,* 242 U. S. 470; *Gooch* v. *United States,* 297 U. S. 124; *Covington Bridge Co.* v. *Kentucky,* 154 U. S. 204; *United States* v. *Hill,* 248 U. S. 420; *United States* v. *Simpson,* 252 U. S. 465; *National Labor Rela-*

tions Board v. *Christian Board of Publication*, 113 F. (2d) 678 (C. C. A. 8).[85]

In *Associated Press* v. *National Labor Relations Board*, 301 U. S. 103, 128–129, the Court stated:

> * * * Interstate communication of a business nature, whatever the means of such communication, is interstate commerce regulable by Congress under the Constitution. This conclusion is unaffected by the fact that the petitioner does not sell news and does not operate for profit * * *.

The *Associated Press* case demonstrates that cooperative nonprofit organizations are not exempt from the National Labor Relations Act.[86] The Act contains no exemption in favor of employers who operate upon a non-profit basis. Indeed, Section 2 (2) of the Act expressly identifies a labor organization when acting as an employer as subject to the Act. Labor organizations are, of course, not only organized on a non-profit basis but operate

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[85] See, also, *North Whittier Heights Citrus Ass'n* v. *National Labor Relations Board*, 109 F. (2d) 76 (C. C. A. 9), certiorari denied, 310 U. S. 632, and *National Labor Relations Board* v. *Grower-Shipper Vegetable Ass'n*, 122 F. (2d) 368 (C. C. A. 9).

[86] The *Associated Press* case may be regarded as one in which the association operated for the benefit of its members rather than as a non-profit organization. If so, petitioner belongs in the same category.

extensive fraternal insurance systems. See, *The Fraternal Compend Digest,* 1941, pp. 55, 56, 98, 178, 180, 245. Moreover, even where Congress has expressly exempted fraternal organizations from social legislation, it has done so on a very limited basis. Thus the Social Security Act as amended, while exempting from the old age assistance provisions service performed for an employer "organized and operated exclusively" for charitable and related purposes (Section 209 (b) (8)), exempts only those employees of fraternal benefit societies who are engaged in ritualistic and dues collection work in the lodges "away from the home office" (Section 209 (b) (10) (A) (ii), 49 Stat. 625, 53 Stat. 1373, 42 U. S. C., Sec. 409. See also Internal Revenue Code, as amended, Sections 1426 (b) (8), 10 (A) (ii), 1607 (c) (8).

D. THE ILLINOIS LAW IS IMMATERIAL

Petitioner refers to the declaration of the Illinois Insurance Code (Ill. Rev. Stat. (1941), Ch. 73, Art. XVII, Sec. 314) that every fraternal benefit society organized or operated under the Code "is hereby declared to be a charitable and benevolent institution, and all of its funds shall be exempt" from state and local taxation. This definition, descriptive only of earlier day brotherhoods whose benevolent form and function were deemed to entitle them to preferential tax treatment, does not—and we think does not purport

to—determine the status of an organization under federal law. The application of the federal statute depends on "the character of the business actually done" (*Bowers* v. *Lawyers Mortgage Co.*, 285 U. S. 182, 188; *National Commercial Title Co.* v. *Duffy*, 132 F. (2d) 86, 88 (C. C. A. 3)), not the "name * * * given to the interest or right by state law" (*Morgan* v. *Commissioner*, 309 U. S. 78, 81, and cases cited). "State nomenclature is not binding." *Hassett* v. *Associated Hospital Service Corp.*, 125 F. (2d) 611, 616 (C. C. A. 1), certiorari denied, 316 U. S. 672.

On this point we think that little can be added to the decision of the court below, which states (R. 233):

> Notwithstanding that petitioner is incorporated as a fraternal association, we think the conclusion is inescapable that it is engaged in the insurance business in a manner similar, if not precisely the same, as mutual life insurance companies. * * * We think we need not labor the distinction which petitioner seeks to draw between a fraternal society and an insurance company. After all, for the purpose of the instant case, it is rather immaterial what label we attach to petitioner's activities. Of more importance is the nature and character thereof. The fact that it was organized for noble and patriotic purposes and has continued in that groove, is not incon-

sistent with a finding that it has and is engaging in the business of insurance. Also, we are not impressed with the contention that the latter is merely incidental to the former. So far as we can ascertain from the record before us, we are of the view that it is more accurate to conclude that its fraternal activities are incidental to its insurance business. * * *

CONCLUSION

For these reasons it is respectfully submitted that the judgment below should be affirmed.

FRANCIS BIDDLE,
Attorney General.

CHARLES FAHY,
Solicitor General.

ROBERT L. STERN,
Special Assistant to the Attorney General.

ALVIN J. ROCKWELL,
General Counsel.

RUTH WEYAND,
FRANK DONNER,
Attorneys, National Labor Relations Board.

DECEMBER 1943.

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1937, c. 372, 49 Stat. 449, 29 U. S. C., Sec. 151, *et seq.*), are as follows:

SEC. 2. When used in this Act—

* * * * *

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

* * * * *

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead

to a labor dispute burdening or obstructing commerce or the free flow of commerce.

* * * * *

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

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SUPREME COURT OF THE UNITED STATES.

No. 226.—October Term, 1943.

Polish National Alliance of the United States of North America, Petitioner, *vs.* National Labor Relations Board.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[June 5, 1944.]

Mr. Justice Frankfurter delivered the opinion of the Court.

The National Labor Relations Board, having found that petitioner, in violation of the National Labor Relations Act, had engaged in unfair labor practices, issued an order of cessation against it. 42 N. L. R. B. 1375. On a petition for review and a cross-petition of the Board for enforcement, the Circuit Court of Appeals for the Seventh Circuit sustained the order. 136 F. 2d 175. Of the numerous issues before that court only two are open here, the importance of which led us to grant certiorari. 320 U. S. 725. The questions are these: (1) In view of the petitioner's activities, is the conduct found by the Board to constitute unfair labor practices within the scope of the National Labor Relations Act; (2) if Congress has proscribed such conduct, has it exceeded its power to regulate commerce among the several States?

The Polish National Alliance is a fraternal benefit society providing death, disability, and accident benefits to its members and their beneficiaries. Incorporated under the laws of Illinois, it is organized into 1,817 lodges scattered through twenty-seven States, the District of Columbia, and the Province of Manitoba, Canada. As the "largest fraternal organization in the world of Americans of Polish descent", it had outstanding, in 1941, 272,897 insurance benefit certificates with a face value of nearly $160,000,000. Over 76% of these certificates were held by persons living outside of Illinois. At the end of that year, petitioner's assets totalled about $30,000,000, in cash, real estate in five States, United States Government bonds, foreign government bonds, bonds of various States and their political subdivisions, railroad, public utility, and indus-

trial bonds, and stocks. From its organization in 1880 until the end of 1940; the Alliance spent over $7,000,000 for charitable, educational, and fraternal activities among its members. During the same period, it paid out over $38,000,000 in "mortuary claims".

Petitioner directs from its home office in Chicago a staff of over 225 full and part-time organizers and field agents in twenty-six States whose traveling expenses are borne by Alliance and who receive commissions for new memberships. Since its 1939 convention, Alliance has admitted no more "social members". Thereafter, all applicants have been required to buy insurance certificates providing various types of life, endowment, and term coverage. These policies contain the typical loan, cash surrender value, optional settlement, and dividend provisions. Petitioner spent over $10,000 for advertising outside of Illinois during 1941. It employs a Georgia credit company to report on the financial standing and character of the applicants, and reinsures substandard risks with an Indiana company.

Alliance lodges are organized into 190 councils, 160 of which are outside the State of Illinois. The councils elect delegates to the national convention, and it in turn elects the executive and administrative officers. The Censor of Alliance is its ranking officer and he appoints an editorial staff which publishes a weekly paper distributed to members. Of the 6,857,556 copies published in 1941, about 80% were mailed to persons living outside of Illinois.

This summary of the activities of Alliance and of the methods and facilities for their pursuit amply shows the web of money-making transactions woven across many State lines. An effective strike against such a business enterprise, centered in Chicago but radiating from it all over the country, would as a practical matter certainly burden and obstruct the means of transmission and communication across these state lines. Stoppage or disruption of the work in Chicago involves interruptions in the steady stream, into and out of Illinois, of bills, notices, and policies, the payments of commissions, the making of loans on policies, the insertion and circulation of advertising material in newspapers, and its dissemination over the radio. The effect of such interruptions on commerce is unmistakable. The load of interstate communication and transportation services is lessened, cash necessary for interstate business becomes unavailable, the business, interstate, of newspapers and

radio stations suffer. Nor is this all. Alliance, it appears, plays a credit rôle in interstate industries, railroads, and other public utilities. In 1941, it acquired securities in an amount in excess of $11,000,000, and sold or redeemed securities costing more than $7,500,000. Financial transactions of this magnitude cannot be impeded even temporarily without affecting to an extent not negligible the interstate enterprises in which the large assets of Alliance are invested. That such are the substantial effects on interstate commerce of dislocating labor practices by insurance companies, was established before the Labor Board in at least thirteen comparable situations.[1] The practical justification of such a conclusion has not heretofore been challenged. Considerations like these led the Board to find that petitioner's practices "have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce", and were therefore "unfair labor practices affecting commerce within the meaning of Section 2(6) and (7)", and as such, prohibited by § 10 of the Wagner Act.

By that Act, Congress in order to protect interstate commerce from adverse effects of labor disputes has undertaken to regulate all conduct having such consequences that constitutionally it can regulate. *Labor Board* v. *Jones & Laughlin*, 301 U. S. 1, 31; *Labor Board* v. *Fainblatt*, 306 U. S. 601, 607. With negligible exceptions, Congress did not exercise its power to regulate commerce prior to its enactment in 1887 of the Interstate Commerce Act, 24 Stat. 379, 49 U. S. C. § 1 *et seq.* Since that time it has frequently chosen, as the Statutes at Large abundantly prove, to regulate only part of what it constitutionally can regulate. Again, half a dozen enactments, other than the National Labor Relations

[1] Matter of John Hancock Mutual Life Insurance Co., 26 N. L. R. B. 1024; Matter of Life Insurance Co. of Virginia, 29 N. L. R. B. 246; Matter of Life Insurance Co. of Virginia, 31 N. L. R. B. 674; Matter of Supreme Liberty Life Insurance Co., 32 N. L. R. B. 94; Matter of Life Insurance Co. of Virginia, 38 N. L. R. B. 20; Matter of Colonial Life Insurance Co. of America, 42 N. L. R. B. 1177; Matter of Metropolitan Life Insurance Co., 43 N. L. R. B. 962; Matter of Prudential Insurance Co. of America, 46 N. L. R. B. 430; Matter of Northwestern Mutual Fire Association, 46 N. L. R. B. 825; Matter of Peoples Life Insurance Co. of Washington, D. C., 46 N. L. R. B. 1115; Matter of Prudential Insurance Co. of America, 47 N. L. R. B. 1103; Matter of Prudential Insurance Co. of America, 49 N. L. R. B. 450; Matter of Life and Casualty Insurance Co. of Tennessee, 53 N. L. R. B. 1196. See also National Labor Relations Board v. Bank of America, 130 F 2d 624, 626.

Act, are sufficient to illustrate that when it wants to bring aspects of commerce within the full sweep of its constitutional authority, it manifests its purpose by regulating not only "commerce" but also matters which "affect", "interrupt", or "promote" interstate commerce. See, for example, Act of June 18, 1934, § 2, 48 Stat. 979, 18 U. S. C. § 420a; Bituminous Coal Act, § 4-A, 50 Stat. 72, 83, 15 U. S. C. § 834; Civil Aeronautics Act, § 1(3), 52 Stat. 973, 977, 49 U. S. C. § 401(3); Federal Employers' Liability Act, § 1, as amended, 53 Stat. (part 2) 1404, 45 U. S. C. § 51; Transportation Act of 1920, § 307(b)(3), 41 Stat. 456, 471; Tennessee Valley Authority Act, § 31, 49 Stat. 1075, 1080, 16 U. S. C. § 831dd. In so describing the range of its control, Congress is not indulging stylistic preferences; it is mediating between federal and state authorities, and deciding what matters are to be taken over by the central Government and what to be left to the States. *United States* v. *Darby*, 312 U. S. 100; *Kirschbaum Co.* v. *Walling*, 316 U. S. 517. And so in this Act, unlike some federal regulatory measures, see *Trade Comm'n* v. *Bunte Bros.*, 312 U. S. 349, 351; *Kirschbaum Co.* v. *Walling*, *supra* at 522-523, Congress has explicitly regulated not merely transactions or goods in interstate commerce but activities which in isolation might be deemed to be merely local but in the interlacings of business across state lines adversely affect such commerce. By the Wagner Act, Congress gave the Board authority to prevent practices "tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce." § 2(7) of the National Labor Relations Act (49 Stat. 449, 450, 29 U. S. C. § 152(7)). Congress therefore left it to the Board to ascertain whether proscribed practices would in particular situations adversely affect commerce when judged by the full reach of the constitutional power of Congress. Whether or no practices may be deemed by Congress to affect interstate commerce is not to be determined by confining judgment to the quantitative effect of the activities immediately before the Board. Appropriate for judgment is the fact that the immediate situation is representative of many others throughout the country, the total incidence of which if left unchecked may well become far-reaching in its harm to commerce. *Labor Board* v. *Fainblatt*, *supra* at 607-608.

We have said enough to indicate the ground for our conclusion that the Board was not unjustified in finding that the unfair labor

practices found by it would affect commerce. And the undoubted fact that Alliance promotes, among Americans of Polish descent, interest in, and devotion to, the contributions that Poland has made to civilization does not subordinate its business activities to insignificance. Accordingly, the Board could find that its cultural and fraternal activities do not withdraw Alliance from amenability to the Wagner Act.

In this aspect, the case we have before us presents a wholly new problem of the relation of federal authority to the business of insurance. The long series of insurance cases that have come to this Court for more than seventy-five years, from *Paul* v. *Virginia*, 8 Wall. 168, to *N. Y. Life Ins. Co.* v. *Deer Lodge County*, 231 U. S. 495, have invariably involved some exercise of state power resisted, in most instances, on the claim that it was impliedly forbidden by the Commerce Clause. Such was the context in which this Court decided again and again that the making of a contract of insurance is not interstate commerce and that, since the business of insurance is in effect merely a congeries of contracts, the States may, for taxing and diverse other purposes, regulate the making of such contracts and the insurance business free from the limitations imposed upon state action by the Commerce Clause. Constitutional questions that look alike often are altogether different and call for different answers because they bring into play different provisions of the Constitution or different exertions of power under it. Thus, federal regulation does not preclude state taxation and state taxation does not preclude federal regulation. Compare, for example, *Heisler* v. *Thomas Colliery Co.*, 260 U. S. 245, with *Sunshine Coal Co.* v. *Adkins*, 310 U. S. 381.

We have, therefore, now presented for the first time not an exercise of state but of national power in relation to the insurance business. And so the ultimate question is whether, in view of the relation between the activities of the insurance business before us and the operation of economic forces across state lines, the Constitution denies to Congress the power to say that the interplay of the insurance business and those economic forces is such that its power "to regulate Commerce . . . among the several States" carries with it the power to regulate the conduct here regulated by relevant legislation.

The process of adjusting the interacting areas of national and state authority over commerce has been reflected in hundreds of

cases from the very beginning of our history. Precisely the same kind of issues has plagued the two great English-speaking federations, the constitutions of which similarly distribute legislative power over business between central and subordinate governments. See § 91 of the British North America Act, 1867, 30 & 31 Vict., c. 3, and Report of the [Canadian] Royal Commission on Dominion-Provincial Relations, (1940) Bk. II, c. IV; § 51 of the Australia Constitution Act, 1900, 63 & 64 Vict., c. 12, and Report of the [Australian] Royal Commission on the Constitution, (1929) c. XIV. These are difficulties inherent in such a federal constitutional system:

The interpenetrations of modern society have not wiped out state lines. It is not for us to make inroads upon our federal system either by indifference to its maintenance or excessive regard for the unifying forces of modern technology. Scholastic reasoning may prove that no activity is isolated within the boundaries of a single State, but that cannot justify absorption of legislative power by the United States over every activity. On the other hand, the old admonition never becomes stale that this Court is concerned with the bounds of legal power and not with the bounds of wisdom in its exercise by Congress. When the conduct of an enterprise affects commerce among the States is a matter of practical judgment, not to be determined by abstract notions. The exercise of this practical judgment the Constitution entrusts primarily and very largely to the Congress, subject to the latter's control by the electorate. Great power was thus given to the Congress: the power of legislation and thereby the power of passing judgment upon the needs of a complex society. Strictly confined though far-reaching power was given to this Court: that of determining whether the Congress has exceeded limits allowable in reason for the judgment which it has exercised. To hold that Congress could not deem the activities here in question to affect what men of practical affairs would call commerce, and to deem them related to such commerce, not by gossamer threads, but by solid ties, would be to disrespect the judgment that is open to men who have the constitutional power and responsibility to legislate for the Nation.

Judgment affirmed.

Mr. Justice ROBERTS took no part in the consideration or disposition of this case.

Mr. Justice BLACK, concurring.

The National Labor Relations Act does not vest courts with power to review the evidence presented to the Labor Board and make independent findings of fact. 29 U. S. C. 160(e). Therefore the propriety of the Board's order in this case must be considered on the basis of the facts the Board found.

The Board did not exercise jurisdiction and enter its order on a fact finding that petitioner's insurance activities merely affected commerce in types of interstate business other than its own. On this fact issue it made no finding at all. Its finding was that the petitioner, being "engaged in the insurance business" was "engaged in commerce within the meaning of the Act." This ultimate finding of fact rested on detailed subordinate findings which revealed the widespread interstate activities of the petitioner in carrying on its insurance business. As the Court's opinion points out, these insurance activities involved a "steady stream, into and out of Illinois, of bills, notices, and policies, the payments of commissions, the making of loans on policies, the insertion and circulation of advertising material in newspapers, and its dissemination over the radio." Only on the basis of the ultimate finding that petitioner was itself "engaged in commerce" did the Board make the essential further finding that petitioner's refusal to bargain collectively with its employees had a "close, intimate, and substantial relation to commerce among the several States" and tended "to lead to labor disputes burdening and obstructing commerce."

As a conclusion of law the Board stated that petitioner's unfair labor practices constituted "unfair labor practices affecting commerce, within the meaning of Section 2(6) and (7) of the Act." Section 2(6) defines the term "commerce" to mean "trade, traffic . . . "; and Section 2 7) defines the term "affecting commerce" to mean either "in commerce" or "burdening or obstructing commerce." 49 Stat. 449, 450; 29 U. S. C. 152(6) and (7). From the language of these definitions, and the Board's findings above described, it is apparent that the Board's conclusion of law that "commerce" was "affected" by petitioner's unfair labor practices rested upon its previous conclusion of fact that petitioner's insurance business was engaged in commerce. The Board concluded that, since the insurance business itself was engaged in

commerce, petitioner's refusal to bargain, and the strike thereby provoked, would affect commerce. Compare *Associated Press* v. *Labor Board*, 301 U. S. 103, 128-130 with *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 219-224.

The doctrine that Congress may provide for regulation of activities not themselves interstate commerce, but merely "affecting" such commerce, rests on the premise that in certain fact situations the federal government may find that regulation of purely local and intrastate commerce is "necessary and proper" to prevent injury to interstate commerce. *Houston & Texas Ry.* v. *United States*, 234 U. S. 342; *Second Employers' Liability Cases*, 223 U. S. 1, 46-47; and see *Wickard* v. *Filburn*, 317 U. S. 111, 121. In applying this doctrine to particular situations this Court properly has been cautious, and has required clear findings before subjecting local business to paramount federal regulation. *City of Yonkers* v. *United States*, No. 109, this Term, and cases therein cited. It has insisted upon "suitable regard to the principle that whenever the federal power is exerted within what would otherwise be the domain of state power, the justification of the exercise of the federal power must clearly appear." *Id.*; *Florida* v. *United States*, 282 U. S. 194, 211-212; cf. *Phelps Dodge Corp.* v. *Labor Board*, 313 U. S. 177, 196-197; *Securities and Exchange Comm'n* v. *Chenery Corporation*, 318 U. S. 80, 92-95.

The Board not having found as a fact that petitioner's life insurance business affected interstate activities of other businesses, the first issue is whether the Board's findings that petitioner's insurance activities were conducted across state lines are supported by evidence. I think they are. This leads to the question, chiefly argued by both parties, "Is the business of insurance commerce, and, when conducted across state lines, subject to federal regulation as such under the Commerce Clause of the Constitution?" For the reasons given in the Court's opinions in this case and in *United States* v. *South-Eastern Underwriters Association*, No. 354, decided this day, I agree that the business of insurance is commerce, subject to federal regulation as such when conducted across state lines, and that the Board's order was proper.

Mr. Justice DOUGLAS and Mr. Justice MURPHY join in this opinion.